

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

Crowne Plaza Hotel - Old Town
Alexandria, Virginia
February 19, 2013

Approved May 20, 2013

TABLE OF CONTENTS

Call to Order, Chairman Doug Grout	2
Approval of Agenda.....	2
Approval of Proceedings, October 2012	2
Public Comment.....	2
Consider Final Approval of Draft Addendum XIX for Public Comment.....	3
Consider Approval of Addendum XX for Public Comment.....	4
Consideration of Draft Addendum XXI for Public Comment	8
Law Enforcement Committee Report.....	27
Other Business.....	28
Adjournment	29

INDEX OF MOTIONS

1. **Approval of Agenda by consent** (Page 1).
2. **Move to accept Option 2 in Addendum XIX.** (Page 2). Motion by Bill Adler; second by Bill McElroy. Motion carried (Page 2).
3. **Move to approve Addendum XIX for American Lobster** (Page 2). Motion by Bill McElroy; second by Bill Adler. Motion carried (Page 3).
4. **Move to accept Addendum XX for public comment** (Page 6). Motion by Pat Augustine; second by Bill Adler. Motion carried (Page 7).
5. **Move to add a new Section 3.1.5 called the limitations on eligibility for Area 2 permit holders and requirement for permit holder to be aboard. To facilitate the accurate and proper identification of the holder of an Area 2 permit and trap allocations, states shall limit the issuance of Area 2 permits for trap fishing or landing lobsters taken by traps to only named individual persons, not corporation. Moreover, within two years of the passage of this addendum, states shall require the named permit holder to be on board the vessel whenever the vessel is fishing for or landing lobsters. Exemptions to the owner-on-board rule may be developed by states to allow immediate family members to operate the permit and vessel and for short-term disability or other hardship for only up to two years** (Page 16). Motion by Dan McKiernan; second by Mark Gibson. Motion was defeated (Page 18).
6. **Move to include another option in Section 3.1.1, trap allocation transfers for partial transfers and Section 3.2.1 to add an option that allows the areas fished to be declared on an annual basis** (Page 18). Motion by Bill McElroy; second by Dennis Abbott. Motion carried (Page 19).
7. **Move to add in 3.2.5 in Option 3. It would read aggregate ownership trap limit. No single company or individual may own traps greater than five times the single ownership cap if they have not already accumulated them prior to the National Marine Fisheries Service publishing a present-day control date. Therefore, should an individual owner be in excess of the aggregate ownership cap before the control date is published, that owner will retain his existing trap ownership and that owner may not increase trap ownership once the National Marine Fisheries Service control date has been published. Any ownership with an accumulation of fewer traps than the aggregate cap at the time the control date is published may not exceed the aggregate ownership cap** (Page 19). Motion by Ritchie White; second by Pat Augustine. Motion carried (Page 20).
8. **Move to remove Option 2 in Section 3.2.5** (Page 20). Motion by Pat Augustine; second by Ritchie White. Motion carried (Page 21).
9. **Move to remove Section 3.1.4, controlled growth, from the document** (Page 22). Motion by Bill McElroy; second by Dennis Abbott. Motion carried (Page 23).
10. **Move under Section 3.1 to add an additional option, areas fished on a multi-LCMA permit: The recipient of a trap allocation from the permit that has a multi-LCMA trap allocation would retain the multi-LCMA history. The recipient could elect to fish in any two of the LCMA areas that the trap history allows. Fishermen would annually declare the areas fished when applying for trap tags. The recipient would be bound by the most restrictive rule for the areas that are designated on the multi-LCMA permit. The history of the trap**

will be retained in the trap database (Page 23). Motion by Bill McElroy; second by Bill Adler. Motion withdrawn (Page 24).

11. **Move to postpone approval of Addendum XXI for public comment until the May 2013 meeting** (Page 26). Motion by Terry Stockwell; second by Bill McElroy. Motion carried (Page 26).
12. **Move to adjourn by consent** (Page 29).

ATTENDANCE

Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)	David Simpson, CT (AA)
Willis Spear, ME, Proxy for S.Train (GA)	Dr. Lance Stewart, CT (GA)
Rep. Walter Kumeiga, ME (LA)	James Gilmore, NY (AA)
Dennis Abbott, NH, proxy for Rep. Watters (LA)	Pat Augustine, NY (GA)
Doug Grout, NH (AA)	Peter Himchak, NJ, proxy for D. Chanda (AA)
G. Ritchie White, NH (GA)	Tom Fote, NJ (GA)
Dan McKiernan, MA, proxy for P. Diodati (AA)	John Clark, DE, proxy for D.Saveikis (AA)
Bill Adler, MA (GA)	Bernie Pankowski, DE, proxy for Sen.Venables (LA)
Rep. Sarah Peake, MA (LA)	Tom O'Connell, MD (AA)
Mark Gibson, RI, proxy for R. Ballou (AA)	Cathy Davenport, VA (GA)
Bill McElroy, RI (GA)	Bob Ross, NMFS
Rick Bellavance, RI, proxy for Rep. Martin (LA)	

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

Ex-Officio Members

Joe Fessenden, Law Enforcement Representative

Staff

Robert Beal	Mike Waine
Toni Kerns	Mark Robson

Guests

Sen. Ronnie Cromer, SC (LA)	Kelly Denit, NOAA
Lori Steele, NEFMC	Michael Eastman, NH F&G
Peter Burns, NMFS	Matt Cieri, ME DMR
Raymond Kane, CHOIR	Bonnie Spinazzola, AOLA
Charles Lynch, NOAA	Richard Allen, Westerly, RI

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, February 19, 2013, and was called to order at 9:30 o'clock a.m. by Chairman Douglas Grout.

CALL TO ORDER

CHAIRMAN DOUGLAS GROUT: This is a meeting of the ASMFC American Lobster Management Board. My name is Doug Grout; I am the current chair of the board. I would like to welcome you all. We have a busy schedule where we will be working on a number of addenda. I would like to recognize Terry Stockwell from the state of Maine to introduce a couple of new commissioners from the state of Maine,

MR. TERRY STOCKWELL: Mr. Chairman, as you can see, I have two new commissioners on my right. Representative Walter Kumiega is co-chair of our Marine Resource Committee and he will be taking Senator Langley's previous position. Willis Spear is here to proxy for Steve Train, who is at his daughter's state swim meet this week. He is a lobsterman from the Casco Bay area.

CHAIRMAN GROUT: Okay, thank you, Terry. Are there any other introductions anybody would like to make here? Bob Beal.

EXECUTIVE DIRECTOR ROBERT E. BEAL: We also have Senator Cromer from North Carolina. He is the new legislative commissioner from North Carolina appointed very recently.

SENATOR RONNIE W. CROMER: Mr. Chairman, one correction there. We fought a war over that. I'm from South Carolina actually. (Laughter)

CHAIRMAN GROUT: I don't believe South Carolina is on this board; is it?

SENATOR CROMER: Mr. Chairman, we're not but we're thinking about starting to raise American lobsters. (Laughter)

APPROVAL OF AGENDA

CHAIRMAN GROUT: Okay, thank you very much. The next item on the agenda is approval of the agenda. Are there any changes? Pete Himchak.

MR. PETER HIMCHAK: Mr. Chairman, I was wondering if under other business there would be a discussion of the technical committee report, January

14, 2013, on the review of the most restrictive rule applied to LCMA 4 and 6. It is not on the agenda.

CHAIRMAN GROUT: Yes, we will add it on there for a discussion. I have one other item that I'd like to recommend to the board is I would like to move Item 6, Draft Addendum XIX final action up the beginning. I think that has a relatively small number of measures; and I think if we can get that out of the way before we get into Addendums XX and XXI, I think that will help move things forward a little bit here.

Is there any objection to move six up to after public comment? Seeing none; we will move it up there. With those changes, are there any objections to approving the agenda as modified? Seeing none; the agenda is approved.

APPROVAL OF PROCEEDINGS

CHAIRMAN GROUT: We also have proceedings from our last meeting in October of 2012.

Are there any changes that people would like to make or modifications or corrections? Seeing none; is there any opposition to approving the proceedings? Seeing none; I will take those as approved.

PUBLIC COMMENT

CHAIRMAN GROUT: Next on our agenda is the opportunity for public comment. This is the opportunity for the public to comment on things that are not on the agenda. Bonnie.

MS. BONNIE SPINAZZOLA: I would like to bring to the board's attention that Area 2 and Area 3 got together since the last meeting and brought together some compatible measures throughout all of Addendum XXI. There are some additions that we have put in there – go ahead.

CHAIRMAN GROUT: Bonnie, could we wait until Addendum XXI and I will give you the opportunity once we get to that on the agenda, but that is clearly related to XXI. I'm looking for things that aren't at all on the agenda.

MS. SPINAZZOLA: Okay, sorry.

**CONSIDER FINAL APPROVAL OF
DRAFT ADDENDUM XIX FOR PUBLIC
COMMENT**

CHAIRMAN GROUT: Seeing none; we will move on to Draft Addendum XIX, and I am going to turn it over to Toni Kerns to give a little overview of this. Remember this is for final action.

MS. TONI KERNS: Just to recall where we stand for all these issues; the transfer tax did go out for public comment twice. The first time it went out as part of Addendum XVIII. When we separated Addendum XVIII into two parts, we did the trap reductions as the final version for Area 2 and 3. Then we pulled out all the other measures for further exploration by the LCMTs, and that is in Addendum XXI that we will discuss later today.

We thought that the National Marine Fisheries Service proposed rulemaking would occur sooner than it has, and so we pulled out the Area 3 trap transfer tax in order to get public comment to NOAA Fisheries in time for the rulemaking. That was Addendum XIX, which went out for public comment in November.

NOAA Fisheries rulemaking was delayed; and so instead of doing an e-mail vote to make sure there was as much transparency as possible we waited to take final action until this meeting today. This addendum addresses the transfer tax for full and partial business sales. It proposes a uniform trap tax as a part of the Area 3 transfer program.

NOAA Fisheries public comment period should be very soon, and so we can include comments to them regarding this issue if changes to the transfer tax are made today. For the first option for the transfer tax amount, currently we have a transfer tax for Area 3. It is 20 percent it's partial transfers and 10 percent on full business sales.

The addendum proposed a conservation tax of 10 percent on all transfers, either a full or a partial. For example, if a fisherman purchases a hundred traps from Fisherman B, ten traps will be retired for conservation purposes and the buyer will have 90 traps out into their allocation for use. If it is a full business sale, obviously 10 percent will be charged on the full business sale.

We would make recommendations to NOAA Fisheries through a letter in their rulemaking if changes are made in this document. We did not receive any public comment during this public

comment period, but we did receive public comment when it was out in Addendum XVIII from the ALA in favor of Option 2 to consolidate their transfer tax. That is all.

CHAIRMAN GROUT: Are there any questions for Toni on this? Okay, seeing none, I would entertain a motion. Bill Adler.

MR. WILLIAM A. ADLER: **Mr. Chairman, I will make a motion that we accept Option 2 in Addendum XIX. My comment on it is that this is the simplest thing I have seen.** The other ones we will get to won't be that simple, I don't think, but I will make that motion.

CHAIRMAN GROUT: Motion by Bill Adler; seconded by Bill McElroy. Is there any further discussion on this item? Seeing none; we will take a vote on this. Do you need time to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: Are we ready to vote on this? All states in favor raise your hand, 11 in favor; opposed; abstentions; null votes. **The motion carries unanimously. I would now entertain a motion to approve this addendum.** Bill McElroy, I will give you the opportunity.

MR. WILLIAM A. McELROY: **So moved.**

CHAIRMAN GROUT: I take it your hand was a second, Bill Adler? Seconded by Bill Adler. Is there any discussion on this motion? Under our new procedures, this will be a roll call vote since it is a final action. Do you need time to caucus? I think we're all set. The motion is to approve Addendum XIX for American Lobster. The motion was made by Mr. McElroy and seconded by Mr. Adler. Okay, Toni, roll call, please.

MS. KERNS: Maine.

MAINE: Yes.

MS. KERNS: New Hampshire.

NEW HAMPSHIRE: Yes.

MS. KERNS: Commonwealth of Massachusetts.

MASSACHUSETTS: Yes.

MS. KERNS: Rhode Island.

RHODE ISLAND: Yes.

MS. KERNS: Connecticut.

CONNECTICUT: Yes.

MS. KERNS: New York.

NEW YORK: Yes.

MS. KERNS: New Jersey.

NEW JERSEY: Yes.

MS. KERNS: Delaware.

DELAWARE: Yes.

MS. KERNS: Maryland,

MARYLAND: Yes.

MS. KERNS: Virginia.

VIRGINIA: Yes.

MS. KERNS: North Carolina is absent. National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Yes.

CHAIRMAN GROUT: **The motion carries unanimously.** Thank you very much on this. I recognize Terry Stockwell.

MR. STOCKWELL: Mr. Chairman, during our discussion on Addendum XIX, Maine's two additional delegates are here, Representative Walter Kumiega and Willis Spear, so I would like to welcome them to the ASMFC Lobster Board.

CHAIRMAN GROUT: Welcome! That addendum that we just passed is effective immediately and we will be sending comments on this to NOAA Fisheries.

**CONSIDER APPROVAL OF DRAFT
ADDENDUM XX FOR PUBLIC
COMMENT**

CHAIRMAN GROUT: Okay, next we will move on to Addendum XX, and this is a draft that we're putting together for public comment.

MS. KERNS: Now we're going to go through Addendum XX. Addendum XX is looking at the Area 3 Closed Area 2 Season Closures that coincides with the agreement that was made between the

offshore lobster pot fishermen and the mobile gear sector. The board requested that the plan development team pull together an addendum that would include measures outlined in the agreement between both industries for bottom sharing within Closed Area 2 in order to protect large concentrations of egg-bearing females as well as prevent gear conflicts.

Background on Closed Area 2; it was first established to protect groundfish in 1969. It went through a couple of different iterations of its main purpose throughout history through the New England Fishery Management Council. In 2012 the council is considering Framework 48, which considers the opening of several areas that are currently closed to the groundfish fishery, the mobile gear sector. Included in that is Area 2.

In September of 2012 the council supported a measure that would allow the groundfish sectors to request exemptions from prohibitions on fishing in groundfish areas. Those two restrictions provided that access would only be granted for the parts of the areas that are not defined as habitat closed areas or that have not been identified as potential habitat management areas currently under consideration by the council in a habitat action that is looking at – it is an omnibus habitat action.

Secondly, the access to Closed Area 1 and 2 on Georges Bank would only be granted for these mobile gear fishermen between the periods of May 1st through February 15th to protect spawning fish. Those are actions that were taken by the council. The New England Fishery Management Council is also considering a second phase that will develop the alternatives to complement some of these openings of closed areas with the habitat management areas for consideration.

It includes rolling closures, spawning closures as well as year-round closures. It is projected that the council will take action on this in April of 2014. As the council started to discuss these openings, the lobster offshore industry came and reported to us that there are large concentrations of egg-bearing females within the area.

The industry and the board members were concerned that opening of Closed Area 2 to mobile gear would have a negative impact on the local lobster population. The board asked the technical committee to review impacts on lobster in the area. They looked at studies that were on areas not necessarily the same bottom type as Closed Area 2 but the studies that we

had available to us on bottom-tending gear impacts on lobster.

Those studies suggested that there could be additional damage to these lobsters if the Closed Area 2 were opened to mobile gear. The technical committee recommended additional surveys and studies should be completed to accurately assess the effects of mobile gear on lobster near Georges Bank.

In response to the action taken by the council, the American Lobster Offshore Pot Fleet fishing Closed Area 2 developed this agreement with the groundfish sector to prevent gear conflicts, and the two industries drafted an agreement that would give equal access to the area. That agreement is in the appendix of the draft document that was on the Meeting CD.

The management options that are in this document are a reflection of that industry agreement. Option 1, which is status quo; there would be no Closed Area 2 season closure. Option 2 is to have a Closed Area 2 season closure. It would be prohibitive to set or store lobster in Closed Area 2 from November 1st to June 15th each year.

All lobster trap gear would be removed from the water by midnight on October 31st from Closed Area 2 except for the habitat areas of particular concern. No lobster gear would be set in the area until 12:01 a.m. on June 16th. Any gear that is set or stored in the area from November 1st through June 15th would be considered derelict gear. In the case where an Act of God may prevent the removal of fixed gear by October 31st, the situation would be communicated immediately to the qualifying sectors and gear removal would commence immediately upon the situation being resolved.

This is mostly to make sure that folks aren't going out during bad weather storms to remove gear. For the initial period, the sector operation plans are not in effect until May 1, 2013. To start this agreement, there would be a period from May 1st to June 15th when mobile gear sector vessels would first enter the area for their six-week spring season, and that is above the 41/30 line should the opening of the Closed Area 2 not become effective until 2014.

This portion of the agreement would remain in effect for the initiation at that time in 2014. The boundaries for the closed area are also marked within the document. If the board were to move forward with this addendum, we would need to determine which measures, if approved, would be recommended to NOAA Fisheries for implementation in federal

waters. As a reminder, this Closed Area 2 Section is 100 percent in federal waters, so it likely would be a recommendation to make that change. That is everything if anyone has any questions.

CHAIRMAN GROUT: Are there any questions for Toni? Dan.

MR. DAN McKIERNAN: Toni, under Compliance, 4.0, I recognize that as boilerplate language, but is it really expected that every state at this board would enact these as state regulations?

MS. KERNS: In the past what we have done for some of the states is that it is a part – that they have done regulations that say something to the effect that we abide by all the rules in commission addenda for the areas that they do not have regulations over. That is traditionally what most of the states have done.

CHAIRMAN GROUT: Are there any other questions? Bill Adler.

MR. ADLER: I don't know if Toni can answer this or not, but on the chart that is in this document it has a couple of areas here where status quo – in other words, shared – and I'm trying to figure out what "a shared" means in this particular situation. Is there a problem in there or maybe there is or isn't; I don't know. There hasn't been or what?

CHAIRMAN GROUT: Bonnie, would you like to answer that question?

MS. SPINAZZOLA: Bill, those areas have traditionally been shared by both mobile gear and lobster. The reason we're concerned about the area between 41/30 and 41/50 is specifically because of the large aggregations of the berried females. Now, while the mobile gear does not really want us to use that term, they want us to strictly acknowledge gear conflict because they're concerned that it could come back and sort of bite them. I understand that as well.

We are concerned very much about the gear conflict in that area, but it is because the lobstermen are not going to move because of all of those lobsters going through. The rest of the areas were part of the agreement between the two gear sectors.

MR. ADLER: Mr. Chairman, I would like to ask, if I may, Bonnie, the shared part, that hasn't been a problem with gear conflicts down in that area south of 41/30; although it is shared, it has not been a gear conflict problem?

MS. SPINAZZOLA: That is something that they agreed to back probably ten years ago, anyway. The scallopers and offshore lobstermen got together and they had an agreement for below 41/30 in Closed Area 2, so it is not really shared. The lobstermen pretty much stay out of it and the scallopers are pretty much in it, but they wanted to denote just that area between 41/30 and 41/50, which is why they used the shared language down below rather than trying to go into other language that has already taken place.

MR. McKIERNAN: Just a technical correction; you do have the two areas that overlap by one day. They both claim they can fish there on June 15th, so you might want to just change that; give one side or the other.

MS. SPINAZZOLA: Toni, we're supposed to get in there June 16th. They're supposed to be able to fish the 15th.

CHAIRMAN GROUT: We will make that correction. Are there any other questions? Dennis Abbott.

MR. DENNIS ABBOTT: Mr. Chairman, would you like a motion at this time?

CHAIRMAN GROUT: Yes, thank you, I would appreciate that.

MR. ABBOTT: I think in view of the fact that the pot sector and the groundfish sectors came to us with this proposal and they're in agreement to it, I would like to propose that we adopt Option 2.

CHAIRMAN GROUT: Seconded by Terry Stockwell. Before we get to discussion on this with the board, I would like to see if there is any person from the public that would like to speak on this motion. Seeing none; I will bring it back to the board. Is there any discussion on this motion? Bill Adler.

MR. ADLER: I understand this is a proposal to go out to public hearing and not a final decision; is that correct?

CHAIRMAN GROUT: That is right, and that is my mistake here. We should be approving the document for public hearing purposes here. Pat Augustine.

MR. PATRICK AUGUSTINE: Mr. Chairman, with that correction, then it appears that the last motion would not be in order.

CHAIRMAN GROUT: Correct.

MR. AUGUSTINE: **And I would that we accept the document as presented for the public to review it.**

CHAIRMAN GROUT: Is there a second on this motion? Seconded by Bill Adler. Is there any discussion on this motion? I will read the motion. The other motion was withdrawn. The motion is move to accept Addendum XX for public comment. Motion by Mr. Augustine and seconded by Mr. Adler. Is there any further discussion? Bill Adler.

MR. ADLER: We have to take this out to public hearing and then come back and approve it. Is there any problem – I saw the 2013 and 2014 dates and the summer is coming. What do you anticipate will be the time schedule on this so that we can get this basically on line?

CHAIRMAN GROUT: Could I have Bob Ross answer that?

MR. BOB ROSS: As you know, the New England Council developed this Framework 48 to allow the sectors into these closed areas. I appreciate the board's efforts to develop this addendum. It was at my urging to complement the agreement between the sectors and the offshore lobster industry. The intent at this point on the other side of the house, on the council side of the house is to move forward with measures to authorize sector access into some of these closed areas as early as possible after May 1st of this year.

At this point, given the complexity of the discussions that have been going on at the New England Council relative to the opening of various areas in Gulf of Maine as well as Georges Bank, the decision was to separate out this action from the normal sectors' approval process. The groundfish sector actions are moving forward, but this closed area access is coming out on a separate timeline. Again, the intent is to make May 1. We are going to do everything possible to implement the sector side of this equation on May 1. Thank you.

CHAIRMAN GROUT: Can you implement this recommendation by then?

MR. ROSS: Given that since September there have been some positioning changes at the New England Council, I understand that there has been a revisit to some of the areas, and at this point the Gulf of Maine closed areas are not going to be included in any

analysis. As a result, it really would be only this Closed Area 2 Issue.

Given that and the fact that the industry has in fact seemingly mitigated the mobile gear concerns of access into this Closed Area 2 during the summer, it could be possible to go out for public comment. My suggestion would possibly just to do public comment rather than public hearings and provide a more timely recommendation to NMFS in support of the offshore lobstermen and sectors' agreement similar to what potentially was intended for Addendum XIX.

CHAIRMAN GROUT: So you're suggesting 30 days and then we approve by e-mail vote; is that what you would need for something timely here?

MR. ROSS: Again, I am unclear internally where exactly when our sector rule is going to go out, but we're driving that to implement as soon as possible and May 1 is our target date. It would assist us if we have that commission recommendation supporting inclusion of the lobster agreement.

CHAIRMAN GROUT: Okay, thank you very much. What we will do is we have a motion on the board right now, and we will vote this up or down. At that point we will talk about how and when we're going to meet or how we're going to consider this for final action. At this point is there any other discussion on this motion to approve this document for public comment? Seeing none; do you need time to caucus? I don't see anybody with a burning desire here for caucusing. This is not a final action so we can do this by vote.

I might even go to the extreme extent of saying is there any objection to moving this forward? Seeing none; **I will assume that is a unanimous vote and thank you very much.** I think we have a recommendation here that we expedite the timeframe for approving this and possibly only go out for public comment as opposed to having public hearings on this. Do we have any objections to bypassing the public hearing aspect of it? Bill, go ahead.

MR. ADLER: I'm fine with it except for the fact would anybody oppose the fact that we only gave comment instead of a hearing; do you expect any problems with that?

CHAIRMAN GROUT: I wouldn't but I will take at least comment from the public on that. Bonnie, would you like to give us your input on that?

MS. SPINAZZOLA: Bill, all of the sectors have signed on to this in the northeast, so we don't expect any problem.

CHAIRMAN GROUT: Okay, is there any objection? Dan.

MR. McKIERNAN: Just a quick question; if this goes in place for the summer and there is a violation, what is the expected course of action?

CHAIRMAN GROUT: We have to ask Bob Ross about that because during the summer it would be the prohibition on mobile gear, so that would be a groundfish sector management violation; correct?

MR. ROSS: Yes, basically at that point, within the sector plan the sector side of the house is codified that they have to stay out of that Closed Area 2 during their prohibited time periods. We would also do the same thing on the lobster side of the house, prohibiting access into that area. If any one of those groups were caught in that area when they were prohibited from being in there, it would be another notice of violation through the normal enforcement process.

MR. AUGUSTINE: Mr. Chairman, relative to whether we should have public hearings or not, I think it is standard procedure that we ask the states if they would be interested in having a public hearing in their area. We in New York would not so it may be possible that you might only have one or two states that so desire one. That may solve the problem so we could move this process a lot faster. It is your choice, Mr. Chairman.

CHAIRMAN GROUT: My question of seeing if there was any objection to bypassing the public hearing process was sort of a way of me getting around and seeing if anybody had objection to that; and if they did, then I assume that would want a public hearing there. I haven't seen anybody object to that.

The next decision we have to make are you comfortable with having an e-mail on this within 30 days, which would sometime in March? No objection to that? Well, Toni will send out an e-mail packet I assume with any written public comments that we have on this, and we will expedite this and get our recommendation to NOAA Fisheries. Okay, thank you very much. Now, we have voted on this without objection, so we're moving on now to Addendum XXI. Toni, would you like to give us an overview of Addendum XXI?

**CONSIDERATION OF
DRAFT ADDENDUM XXI FOR
PUBLIC COMMENT**

MS. KERNS: Yes, Mr. Chairman, thank you. Hopefully, we won't be baffled by Addendum XXI today. That is my hope. All right, Addendum XXI is the second half of effort consolidation for Areas 2 and 3. The Lobster Board voted to scale the Southern New England Fishery to the size of the resource, and this addendum proposes a consolidation program for Areas 2 and 3 to address latent effort and reductions in traps allocated.

This is focusing on the latent effort and the transferability programs. This is in order to improve the economic performance of the fishermen who will remain in the fishery by constraining unused gear from returning into the fishery should the stock rebuild. As I reminded everyone earlier, we have done the trap reductions through Addendum XVIII for both of these areas.

Because we have done the background of this many times, I decided to skip that section and just go straight to the options. We last saw this presentation in August. Industry members as well as board members got together in the fall to pull out the pieces of the addendum that they no longer thought were necessary and to change the language some for other parts to refine it to meet the needs of industry as well as the managers.

Looking at the trap allocation transfers for multi-area fishermen – and this is for both Area 2 and 3. In your addendum document it is Section 3.1.1 and 3.2.1 as well on Page 6 and 9 of your document. Partial transfers of a multi-area trap allocation; currently the commission's plan is that if a person chooses a single LCMA – let me go back.

If we have a person that wants to transfer an allocation that has the history of multi-areas and they only want to do some of their traps, the buyer, when they buy those traps under the current plan has to choose only one area that they can fish those multi-area traps. For example, a person buys a hundred traps that have a historical allocation to fish in Area 2, 3 and 4, ten of those traps are retired from conservation purposes under the transfer tax and ninety traps are available to be fished or banked.

The buyer must choose only one of those three areas, Area 2, 3 or 4, that the trap had history in to fish in the future. All the other areas will lose their fishing privileges for those traps, and that is currently how

we have this on the books. Option 2 is to allow industry to choose two areas to be fished.

Those two areas may be fished in any of the LCMA's that the trap history allows with a maximum of two areas per year, declare the area fished when you do your trap tags, and you're bound by the most restrictive rule for those two areas. You pick those two areas and then it is set.

Option 3 is to have all areas be eligible. If a person buys a multi-area trap from another fisherman, it stays a multi-area trap and you can fish any of the areas at any time, but you are still bound by the most restrictive rule. Next is looking at full business transfers for multi-area history traps.

Under the current commission rules, status quo, when selling your full business with multi-area history traps, the history remains with all those traps. The person purchasing the traps may fish those traps in any of the areas that trap had history in; again still bound by the most restrictive rule.

Option 2 is the person purchasing the traps must choose only one of the areas that trap had history in and can only fish in that one area, and all other fishing privileges for the other areas are forfeited. Looking at an aggregate ownership cap; this is for Area 2 only. The commission adopted Addendum VII which limited the number of permits any single individual or company could own.

That was two with the exception for a group of permit holders that were grandfathered in; and so if you had more than two permits before December 2003, they may remain that number of permits they had above two, but they cannot purchase or share ownership of any additional permits from that point forward.

Two options are being considered in the addendum to further limit the consolidation within the area to allow as much cultural and geographic distribution within the fishery as possible. The concept is built on the principles of banking which we had talked about previously. The goal is to reduce the possibility of one entity exerting significant control over the markets and to keep as many individuals in the fishery as possible.

Option 2 is to allow the purchase and accumulation of traps above the active trap cap; and that is that an individual cannot own more than 1,600 traps. Eight hundred of those traps would be active traps and 800 of those traps would be inactive or what we were calling before banked traps. All of these traps are

subject to annual reductions. This option is only looking at limiting traps. It does not limit permits.

Option 3 is you cannot own more than 1,600 traps, 800 active traps and 800 banked traps, or more than two permits. If someone owns more than two permits at the time of implementation, they may retain that overage but not purchase anymore beyond what they currently own, so again just grandfathering in individuals. These traps are subject to annual reductions as well.

This is for Area 2 only and Area 2 is limited just to two permits right now. It is different rules for Area 3. For controlled growth for Area 2, controlled growth is being proposed to allow an entity to annually move trap allocation from their trap allocation bank account and add them to their allocation of active traps at some predictable rate.

Controlled growth applies to each individual's allocation by their LCMA, and it is not an individual's total allocation. The controlled growth provision would be effective in the same year as NOAA Fisheries implements transferability and once annually thereafter. A full transfer of all qualified and banked traps would be exempt from this controlled growth provision.

Option 1 would be status quo. Currently we have no rules on growth so you can move as many traps as you want at any given time. Option 2 is to have a maximum of 400 traps that can be moved per year from a bank account to active accounts. Next is moving over to regulations that are for Area 3, so these are options that are contained in Section 3.2 of the document. I already went over the first, which is the multi-area fishery transfers for full and partial and will not go over those again.

Next is looking at the Area 3 designation. The document proposes to split Area 3 into two designations; LCMA 3 and LCMA 3 Southern New England. Lobstermen that have been fishing in the Southern New England portion of Area 3 have typically fished a larger number of traps. It is believed that the continuation of historical fishing methods would deter the transfer of effort into the Gulf of Maine or Georges Bank stock area.

Therefore, this endorsement is being proposed. The proposed endorsement area is located along the recognized boundaries within Area 3 and it is at the 70 degree boundary line. The Area 3 endorsement would also allow fishermen to be profitable in the offshore fishery Southern New England Stock Area.

It should be noted that the Southern New England Lobster Fleet have the largest number of reductions in traps because they were introduced at a sliding scale, and those with the larger trap allocations had the largest amount of reductions. The endorsement of SNE 3 would not restrict fishing in all of Area 3, but the most restrictive rule would apply for anyone that designated SNE.

Option 1 is status quo; no designation. Option 2 is to annually designate on your permit whether or not you're going to fish in LCMA 3 or LCMA 3 Southern New England. As a reminder, you can change that every year. I was hoping to show you on the map, but it is too small so we will just skip over.

Next is looking at trap and permit caps on ownership. We're proposing several types of restrictions on ownership to inhibit excessive consolidation. There are three types. It is a cap on the number of individual's active traps a single permit may fish; a cap on the number of traps a single permit may fish and own; and a cap on the aggregate number of permits an entity or company can own.

First is just your trap cap, so number of active traps an individual can own. Option 1 is status quo. For Area 3 the current trap cap is 2,000 traps. Option 2, as specified on the table on Page 11, we would have a set of trap caps. One cap is for LCMA 3 and one is for the designation Southern New England LCMA 3.

For both of these, it assumes that NOAA Fisheries will implement the reductions that were agreed upon in Addendum XVIII. If they do a lower trap cap schedule, then we would adjust these accordingly. For Area 3 we would start off at 2,000; and by the fifth year we would drop down to 1,548 as the trap cap,

If someone designated just Southern New England Area 3, their cap would start off at 2,000 and drop down to 1,800 traps, and this is to reflect the practice that those fishing in the lower portion have had historically a higher number of traps than those fishing in Georges Bank and Gulf of Maine.

Next is looking at the single ownership cap, and single ownership cap somewhat captures the concept of banking that we previously had called it but hopefully have simplified things. The single ownership cap allows for the purchase and accumulation of traps over and above the active trap cap limit. Newly purchased traps along with traps already owned by a permit holder may be combined to equal the number of traps necessary to go through

these reductions that we have implemented in Addendum XVIII, and it allows industry to be able to end up at that trap cap level of either 1,548 or 1,800.

Option 1 is status quo; no ownership caps. Option 2 is to put together an ownership cap. This is for anyone fishing in Southern New England. It is not tiered to the designation. In Year One someone could have up to 2,333 traps and drops down to 1,900. In the first year it allows someone to have 333 inactive traps, and in the final year it will allow an individual to have up to a hundred inactive traps that could be moved into the active account if that individual had a trap reduction forthcoming.

Traps would have to be moved from the inactive to active by the regulatory authority that issues that individual's trap tags, whether it be the state or NOAA Fisheries. Lastly on our caps we have the aggregate ownership cap. The aggregate ownership cap is intended to look at anti-monopoly.

Addendum IV limited the number of federal permits that a single entity or company could own to five with an exemption for those who at the time of the implementation of the addendum had more than five permits. They were grandfathered in. This regulation was put in place by the commission. This regulation has not been put in place through NOAA Fisheries.

While it is a regulation that is on our books, it is not actually being promulgated for the Area 3 fishermen because NOAA Fisheries regulates them. Option 2 is that no single company or individual could own or share more than five LCMA permits and could not own more than five times the individual ownership cap.

Any entity that owns greater than the aggregate cap at the implementation of this addendum would be able to retain that, but they would not be able to purchase any additional traps and then therefore subject to the cap until they dropped down to the lower number of permits. That aggregate cap for number of traps in Year One is 11,665.

The document that is on the CD had an inaccurate number there and so that first number in Year One should be corrected. It has been corrected in our documents. Year Five you drop down to a total number of 9,500 traps that any individual or company could own. States would be required to submit with their compliance reports the number of allocated traps for Areas 2 and 3; the number of traps transferred for Areas 2 and 3; the rate of transfer for

Areas 2 and 3; the maximum number of traps fished for Areas 2 and 3; and the degree of consolidation that has been seen for that previous year for both Areas 2 and 3.

Some of this information will be able to be pulled from the transferability database and others the state would have to provide to the commission. The transferability database is still being put together by ACCSP. We are waiting for the states to get back to Mike on a couple of questions that he had before he moves forward with the prototype for testing.

CHAIRMAN GROUT: Are there any questions for Toni? Pat Augustine.

MR. AUGUSTINE: Excellent presentation, Toni, very clear. It cleared up a lot of concerns our lobstermen had. This document is about ready to go out to the public, and as you know I am a stickler for details. I noticed that somebody's finger got stuck on the word "that" starting with partial transfer of multi-LCMA trap allocation, Option 1, status quo, we end up with a permit "that, that"; Option 2, "that that"; Option 3, "that that"; full business, Option 1, "that that", the same word in Option 2.

I think that occurs in about eight or nine different places; and if I'm picking on somebody, I don't mean to do it intentionally. If it is a public document, I wish those would be removed. And then a question on the last part of the options that were presented, 3.2.3, when we talked about – I think it was that one or the one before when we talked about NOAA and the possibility of their putting in place – I'm sorry, it was Option 2, aggregate ownership, cap and ownership accumulation; whether or not they had any idea of when they would establish a control date if in fact that option were to go forward. Those are my only questions, Mr. Chairman.

CHAIRMAN GROUT: Bob, did you hear that question? He was asking about the possibility – I believe you were asking about the possibility of a control date relevant to the aggregate – Section 3.2.5; an aggregate ownership cap control date being established by the National Marine Fisheries Service.

MR. ROSS: Mr. Chairman, I apologize; I was distracted there, but, yes, our intent – and I go back to the Draft Addendum XVIII, which had a lot of similar measures in it. It did have a control date recommendation to the National Marine Fisheries Service that would allow us to notify all impacted permit holders that there is the possibility of some kind of ownership constraints going forward in the

future. If I'm understanding the question right, yes, we would support a request for a control date.

MR. G. RITCHIE WHITE: Bob, if I could follow up on that, it was Addendum VII, I believe, in which we passed – Addendum VII created the situation of limiting the number of permits, and I don't believe the Service has implemented that. Could you explain why that happened?

MR. ROSS: The dilemma we face – and we have tried to articulate some of this in our earlier comments I believe on XVIII. The states generally have owner/operator requirements; whereas, the federal government allows ownership of permits by multiple entities; for instance, individuals, partnership, corporations. In fact we have NGOs in some states owning permits now.

The problem we face – and those of you that are familiar with the council process, there are various moves underway under various fisheries to constrain or cap ownership. Groundfish is one, scallop is another, et cetera. The reason we did not move forward with a monopoly or ownership control earlier is that this is one area that we would urge the need to develop a working group with the commission-impacted states to try to find a way that we could consistently determine ownership when there were multiple owners involved at the federal level.

Even though the state has an owner/operator, that same individual may also on our side of the house be defined as a corporation potentially with other owners in that corporation. If those other owners then have other boats, what we need is a way consistently across all jurisdictions to determine whether that is a full business transfer for taxing purposes are exactly what you would define as a full business. I fully support the approach towards controlled ownership caps, but I just voice caution that it is going to require some effort to integrate the federal corporation and partnership approach to the owner/operator approach at each state level. I hope that helps a little bit.

MR. WHITE: So it would not be the National Marine Fisheries Service's intent then to go back and implement Addendum VII?

MR. ROSS: No, it would not be our intent.

CHAIRMAN GROUT: And just for clarification on the record; it was Addendum IV that implemented that. Just so the board knows how I'm going to handle this; after we get through with questions for

Toni on this, I'm going to go to the audience and see if we have any public comment overall on the addendum, and then we will come back to the board to have a discussion about the document.

I know there has been some suggestion on the part of some that there are some options that need to added and subtracted here, so I will give you opportunity, but I do want to just get the questions here for Toni first in place. Bill Adler.

MR. ADLER: Toni, Page 7 where they go through the options and bound by the most restrictive rule; that I assume deals with if an area has a different trap limit than the other area, you're bound by the most restrictive rule. That is my first of three questions. Is that basically what I'm seeing here?

MS. KERNS: Yes, it is speaking to the number of traps that you have available to fish in that area, so your multi-area fishermen are bound by the most restrictive of those, whichever is the lowest; as well as if you're a multi-area fisherman, it also applies to your biological measures as well if you're fishing in multiple areas.

MR. ADLER: Okay, thank you. Question 2; Page 9; Option 2, a maximum of 400 traps could be moved per year; that concept of moved per year; move where? How does that work?

MS. KERNS: Again, as I said before, this controlled growth provision is to move an inactive trap into an active status, so you could move 400 traps from inactive to active. I believe, though, industry is asking to now remove this controlled growth provision altogether, if that is helpful in your questioning.

MR. ADLER: Okay, moved per year, I didn't know where they were moving. And the last question – well, actually it is not a question. If we go out to public hearing with this, I noticed in a couple of places you had examples. To keep everybody from getting totally confused with this whole thing, the examples will be very important to give to the public. Otherwise, they're going to just haze over with this stuff. It is getting very confusing.

MR. McKIERNAN: I'd like to follow up on the comments made by Ritchie and Bob. I have a lot to say on this. Back in Boston my job is to approve permit transfers, sort of our limited entry permit systems. It is the corporation that undermines most of our goals. I urge this board to really stop and think about this.

Ritchie just pointed out that it has been about a decade when this rule was put in, and it seemed very rational and it was never implemented by Bob for very rational reasons. We're about to embark on a massive trap cut in Southern New England, in Area 2 especially, that is going to rework or reshape who is in this fishery.

This is an incredibly opportune time to adopt a measure that I call the owner-on-board measure for all of Area 2. We have this for our coastal permits; so any Area 2 permit holder that has a state of Massachusetts coastal lobster permit and an Area 2 allocation from us, they have to be the person who signs for the permit. They have to be on the boat unless we give them a letter for various reasons.

That is what is needed to track this because all of this talk about let's limit the number of permits per entity and all that, it is very labor-intensive and very legalistic and impossible to track. For example, if we have permits that are issued in corporate names or boats, then what you're asking us to do through this measure is mine into the corporate structure of each boat that is not issued to a person to determine if one person who is already in another corporation migrated into that.

That is just a complete waste of time, so I suggest that much like Maine has their owner-on-board rule for all boats fishing and landing in Maine ports, so all the way out to the Area 3 Line, this would solve a huge amount of problems for Area 2, and it would rework this fishery going forward so that it is owner-on-board.

Owner-on-board creates a level of compliance, of accountability. The biggest problems we have in enforcement and compliance is the hired captain. We get this all the time. People want to drop a dime to us, they're calling us asking for enforcement, and nine times out of ten the law breaker is someone who doesn't own the boat and doesn't own the permit.

If we were to consider this as an option for this addendum that Area 2 – vessels that are licensed to land lobsters with an Area 2 trap allocation, that the states could step up and say you have to be owner on board. The permit holder or the state landing permit is a person. Then we can go forward and we can track this stuff; but if you're asking us to determine the corporate makeup, we're dead.

This is a great opportunity to sort of go into a new course for Area 2 Southern New England. Now, as far as Area 3 goes, I'm not going there. There are

already fleets; there are already hired captains, very common. I have no interest in changing the way Area 3 manages its fishery; but for Area 2 it is already a predominantly state-managed fishery, and that is why this makes sense.

CHAIRMAN GROUT: Are there further questions for Toni? Dave Simpson.

MR. DAVID SIMPSON: Actually I'm not sure if I have a question for Toni, but Dan's comment awakens me. Normally I let Area 2 and 3 people do whatever it is they want to do, but this whole idea of permitting to me is a uniquely government function and should be done at the discretion of the government entity at the state level.

I'll just express again my anxiety when we begin to do management in federal waters because I think it is the feds responsibility to manage federal waters. We had lots of discussion about how difficult it is to link up a commission process and action with a federal one. I have only got a couple of guys in Area 2; but when you start to talk about owner-on-board, we have that, too, and we have every exception imaginable. If a guy sprains his ankle or, God forbid, actually gets sick, are they out of business, so you make an exception for it.

Pretty soon the whole thing is a farce, anyway. It sounds good. I think the concept – and I said this at the New England Council years ago – the concept of owner/operator I think is a good one, but the commission is getting deeper and deeper into economics of fisheries, and there really is no – you know, there is no enforceability of a commission plan that has at its roots economics if it is not fisheries conservation. So, just a little bit of caution here, and I will tell you my antennas go up when we start talking about how you can permit and who you can permit and what they can do that has nothing to do with conservation.

MR. WHITE: Mr. Chairman, to continue in that vein, I would tend to guess that there is probably no vessels fishing out in Area 2 and 3 offshore that aren't corporation. Now, it may be one individual owner, but it is probably an LLC. There are probably very few people today that are going to have the kind of liability that they would have without having the corporate veil.

I think Dan's idea would solve a lot of issues for us, and I think in today's world the ability to get around that would be very easy. I think you could have an LLC and give a captain a one-hundredth share; he is

an owner even though he is not a majority owner. I think it would be very difficult to go there.

MR. McKIERNAN: Ritchie, it is our experience that the permit is issued to someone who signs his name or her name; and when that boat lands, they look for that person. Now, whether they put the business into an LLC is independent because the permit is issued to the person, and that person needs to be on the boat.

To Dave's point, we have a rule that says we will give you a letter of authorization for medical reasons for up to two years. The industry is quick to – because in Massachusetts it is a very popular system to have the permit holder on board. When things are amiss, we get a call and we call the person, but this – our experience is not that this is easy to circumvent. We're really happy with the system. I think Maine has that same comfort level. Honestly, what is working for 95 percent of the landings in the United States ought to be looked at a little closely.

CHAIRMAN GROUT: Okay, are there any other questions? What I would like to do is now go to the public and see if there is any public input on this and then we will come back to the board. If there are any changes that you would like to make to this draft addendum, we'll entertain motions for that. Bonnie.

MS. SPINAZZOLA: Mr. Chairman, I'm going to start very quickly at the beginning only because this is a compatible plan. I know it has to do with Area 2 initially, but I will just throw this out there as I'm talking about Area 3. One of the things we wanted to discuss is the partial and full transfers.

One of the things is right now NMFS has for a full transfer, in Area 3 we can choose any area or any numbers of areas that we wanted. We know, for instance, members of the commission wanted only one single area and that is what is status quo now. However, due to many issues – one of them flexibility – for instance, I am going to bring something out. I have it on Page 6, but I changed this document numerous times.

Just above management tools being considered before Area 2, you have a paragraph that starts with "SNE" and it says, "SNE fishermen recognize that the decline in lobster abundance and the potential for future offshore industrial development could constrain the fishable areas and reduce future landings to unforeseen low levels."

That alone gives a good picture of why multiple areas could be needed for something like the LCMA partial

and full transfers, why we wouldn't want to be held to one area. So both Area 2 and Area 3 are combined recommending that we are able to choose two areas. That way it is more of a pragmatic possibility for the industry and yet it makes it a little bit easier for the managers. That is the first thing.

The other thing is that if you will notice for areas to be fished for full and partial, we have put in there that it is annually that the industry – since they would be holding on to the history of their LCMA or of the permit, they would be able to annually choose any two areas. They would fish only two areas per year. As fishermen do now, they are able to designate areas each year when they get their trap tags if they are a multi-LMA permit holder.

All we're doing is saying that we would like the same thing only we're only requesting two permits or two areas to be used and the most restrictive would apply. Okay, the other thing – and this might get to what Dan was just talking about with the confusion as far as permit holders and corporations.

Area 3 is going to, in this document, recommend that we use traps as currency; because what we're doing is we're talking about single ownership permits or single ownership trap caps, the active trap cap and aggregates, and we recommend that it would be an aggregate trap cap as well instead of permits, because you can have any number of traps on a permit.

Four permits could equal your ability to fish your top number of traps or it could be two or it could be ten, whatever it might be; but if you have a single number of traps allowed on a vessel or to an owner for aggregate, then you know exactly what you're talking about. Okay, so I'm going to back into Area 3 proposed measures.

We do have the flexibility and the compatibility as far as Area 2 and 3, talking about those partial and full transfers. The other thing, too, is if you were to agree on the exact same scenario in full and partial transfers, then you really wouldn't have to call it full or partial. It would just be transfers and it would simplify things incredibly.

Okay, the other thing is under the LCMA 3 endorsement – and I know a lot of people had questions about this and it was brought up to me as to why we might have more traps in Southern New England, why we would want to separate the area. The reason for that is that in Georges Bank and the Gulf of Maine we actually have industry fishing

fewer traps than what has been the history, as Toni said earlier, fishing in Southern New England.

One of the reasons we thought this would be a good idea is because, first of all, it was requested of us from the LCMT fishing in Southern New England. We were concerned that if we didn't agree with that, we would end up with a shift of effort going to Georges and to the Gulf of Maine. Since we have marine mammals as well as lobster areas and everything else to be concerned about, we wanted to try and mitigate any sort of shift of effort whatsoever.

So if we try and give those people in Southern New England what it is they typically need to fish and make a healthy living, then we felt that was a good thing to do. Further, back when we first started reducing our traps, the Southern New England portion of Area 3 reduced the highest amounts of traps because we had a sliding scale trap reduction, which was the highest number of traps reduced the most.

Therefore, because they reduced the most, we're talking about basically bringing them to where they were – or not exactly to where they were; they were actually fishing much higher levels, but they're slightly higher than the regular Area 3 Gulf of Maine and Georges people. The other thing is that in Southern New England you have a trap cap or an active trap of 1,800.

However, Area 3 has 5 percent reductions in traps. Those people in Southern New England will reduce the five reductions; they will go down to the 1,500 traps, but they will be able to buy back up to the 1,800. The people in Area 3, as it stands Gulf of Maine and Georges Bank would have to stay at the 1,500.

Finally, as far as that is concerned, because of equalization of the value of the permit, everyone in Area 3, whether it is Southern New England or the other Area 3, would be allowed to go to an ownership, single ownership of the 1,800 traps. That being said, of course, the ones in Georges and Gulf of Maine couldn't fish the full 1,800.

But because people would want to have the same value as everybody else, and they wouldn't want the people in Southern New England to have a higher value on their permit, especially when they want to go and sell it – the people in Georges and the Gulf of Maine will have an 1,800 trap permit; yet they will only be able to be fishing 1,500.

Therefore, each one of these permits will hold an extra 300 traps that won't be fished, and we consider that further conservation. The other thing, too, is in all of this I just want to kind of not let you forget the fact that – or I don't want it to get lost in all of this – that in Area 3, once we finish with our five years of reductions, we will have reduced 55 percent of our traps and will be fishing approximately a hundred – maybe a little less, maybe a little more, I'm not sure right this second, but around a hundred thousand traps in all of Area 3 from Cape May up through Maine and out to the Hague Line.

And, finally – I know I said “finally” before – there is not a precedent for splitting the areas. In Area 3 alone we have above the 43/10, I think it is, up into the Gulf of Maine, those people in Area 3 v-notch and the rest don't, so Area 3 already is split along a stock assessment line or a stock area line. Okay, so that was that and I hope I answered questions there.

As far as the single ownership cap, I think I mentioned about the 300, but I did want to say again that we want to be able to use or we think it is a really good idea to use traps as a currency, so that we're all talking about the exact same thing instead of permits that we don't know how many permits belong to a – or how many traps belong to a permit. Again, all of these things that we're talking about are renewable.

The areas are renewable if you have a multi-LCMA permit on an annual basis; with if you're fishing two, you'd have to do it with the most restrictive. The other thing I just want to mention is as far as the aggregate in Area 3, Option 2 is basically the same thing that Area 3 would now be recommending, which is that no single company or individual may own traps greater than five times – and again traps – the single ownership cap if they have not already accumulated them prior to NMFS publishing a present day control date.

Therefore, should an individual owner be in excess of the aggregate ownership cap before the control date is published, that owner will retain his existing trap ownership, and that owner may not increase trap ownership once NMFS control date has been published. Any ownership with an accumulation of fewer traps than the aggregate cap at the time the control date is published may not exceed the aggregate ownership cap. Basically what we're talking about – Toni had on the screen 11,665; all that is, is five permits, just as we talked before, but with the maximum number of traps associated with it. That's it. Are there any questions?

MS. KERNS: Just to make it very simple, what Bonnie was asking to do is under Section 3.1.1 and Section 3.2.1 is to either – and I'm not sure what the board would like to do, so I'm going to say either/or – either leave Option 2 as it exists and add an additional option that states that you can two areas in which you buy in to be eligible to fish and that you can choose those two areas on an annual basis.

Right now the option reads you pick your two areas and you're done, so either you change Option 2 to say on an annual basis or you add an additional option and you say just that. Secondly, what she also is asking is to add a third option under Section 3.2.5 that gives the aggregate ownership currency in traps and it adds a grandfather clause.

MS. SPINAZZOLA: Thank you, Toni, you made that sound much easier.

CHAIRMAN GROUT: Are there any other questions? Okay, Pat Augustine.

MR. AUGUSTINE: Mr. Chairman, I was going to ask if there would be a problem with NOAA having to deal with that. Would that be acceptable, the idea that we would put those two extended options in there as a part of the public document? Would it give you folks any grief of any sort or would it be doable?

I notice when we talk about on an annual basis as opposed to a one-shot deal, where the areas are divided as Bonnie clarified, that may create you folks some real grief. Could we get a response to that first? And then if not, I would move that we add those options, Mr. Chairman.

MR. ROSS: Mr. Chairman, a couple of observations here from our perspective, and again a lot of this issue is a rehashing of some of the measures that were in this Draft Addendum XVIII, which NMFS commented on fairly extensively at that time.

For the issue of partial trap transfers and the ability to retain more than one area as a buyer, I think we have to go back to Addendum VII and Addendum XII where the commission established a trap transferability subcommittee that worked literally well over a year on the minutia of how a transferable trap program would work. I think what we're hearing here is this is a very complicated process that we're trying to move into.

The industry is looking at this as a retirement plan. They're looking at this as a financial investment for them. The responsibility of the jurisdictions should

be to ensure that all of our jurisdictions agree on numbering of traps, what those traps authorize us to do, where these lobstermen can fish, et cetera.

One of the things NMFS urged initially was the need for a unified database because this is an extremely complicated process. I'm unclear at this point if in fact the database has the ability to monitor multiple traps; but just looking at the complexity of – at least in the beginning, when we turn on transferability, I think we have to keep it simple.

As transferability grows, I think we can begin to implement tweaks and adjustments to it, but from the federal perspective – and I articulated this at the last meeting – we had hoped to have a rule out for this meeting. I apologize for us not having the transferability proposed rule out for you to see at this meeting, but we expect it to be out in the next month.

We're going to strive for a long public comment period on that proposed rule. That rule has a lot to do with transferability and this addendum. The concept here is that we want to be able to turn on transferability with the states and have it work correctly. We do have some concerns about allowing traps to be sold and retaining multiple area rights.

We also have some concerns about ownership and the way that ownership is defined. For instance, this issue of a monopoly – well, one area, Area 3 has less than a hundred vessels. They're proposing a maximum of five permits. Area 2, on the other hand, has several permit holders and they're proposing a cap of only two permits. This isn't a monopoly issue.

It has got more to do with ownership concerns but from the federal perspective a monopoly implies the ability to impact pricing structures. Area 3 accounts for a very small percentage of all lobsters landed in the northeast. In fact, if you get outside of Maine, there is really no other area that I would consider from an economic perspective to have pricing control other than Maine.

Monopoly and ownership concerns to avoid monopolies are an issue for us, but I understand the issue here is you do want ownership controls. We will do our best. If this addendum goes out and we do receive a recommendation to move forward, we will do a control date. We will make an effort to coordinate with the states and align corporations and owners. I hope that at least identifies some of our perspective on this issue. Thank you.

MR. AUGUSTINE: Bob, that was very helpful, thank you. I was going to suggest that we look at including those options that were presented by Bonnie; but after listening to what Mr. Ross had to say, it just seems as though it put another spin on a document that is already going to have some questionable options in it.

If we were to include either of those options, I think we would need a caveat that would say below it not preferred by NOAA because of the complications. It is a tough one. It sounds like the right thing to do; but after listening to NOAA's position on it, I find it very difficult to include the expansion of the options we have. Whenever you're ready, I will make a motion to go forward with the public document, Mr. Chairman. I know you have some other commissioners who want to speak to the issue.

MR. STOCKWELL: Mr. Chairman, from Maine's perspective, I have been deliberately not commenting on any component of the development of what I consider an extremely complicated action. Before we agree or even consider adding any additional measures, Bob's comments notwithstanding, I have a question I guess to Toni from the technical committee's perspective on an option to have annual declarations into the areas. To me it seems to be a conservation measure that trumps all the other management measures, so I'm waving that yellow flag.

MS. KERNS: The technical committee has spoken particularly to a designation. The technical committee has suggested to the board many times over that you all split Area 3 into their stock unit areas, which would help them be able to better identify how the measures are impacting the resource itself. Beyond that, they haven't looked at this.

MR. MCKIERNAN: To follow up on Bob Ross' comments, I agree with everything that he said. I just wanted to add another detail or my perspective on why there is a desire for the multi-area trap history to be retained. I think it has to do with the ability to actually get traps on the so-called open market.

We already have a lot of constraints on the transferability or we're going to have that because we have three kinds of permits and three kinds of allocations for the area. It is the state-only traps; it is the dual traps; and then it is the federal-only traps. If you're looking to get some traps, you have got to find somebody who has got the right flavor.

Then you have got this Area 2 and Area 3 – I think I am right about this – that some of the guys who are anticipating selling or buying traps, once this goes into place, they feel that if there is more flexibility, there is going to be more trap movement. There is going to be more opportunity to scale up when you have got less constraint on that.

Therefore, it might become more of a buyer's market as opposed to a seller's market. If there is only one guy in your state who has got the kind of allocation that you need, that is going to be pretty expensive. From my experience the more the pool has other eligible sellers, you will get a better deal.

But to my previous points, I apologize if I bring that forward about owner on board in Area 2 so late in this process, but I had an epiphany and I have been struggling with this for the last six months or so on other permitting issues. I would like to offer a motion to add that to this document; and if it fails, I would request that the board consider a subcommittee to address this if there is any heartburn with some of the other states involved.

I think this is pretty simple, so could I offer a motion that would add some new text to this document? Okay, I have sent that staff and I will read it. **I am moving to add a new Section 3.1.5 called the limitations on eligibility for Area 2 permit holders and requirement for permit holder to be aboard.**

It does like this: to facilitate the accurate and proper identification of the holder of an Area 2 permit and trap allocations, states shall limit the issuance of Area 2 permits for trap fishing or landing lobsters taken by traps to only named individual persons, not corporation. Moreover, within two years of the passage of this addendum, states shall require the named permit holder to be on board the vessel whenever the vessel is fishing for or landing lobsters. Exemptions to the owner-on-board rule may be developed by states to allow immediate family members to operate the permit and vessel and for short-term disability or other hardship for only up to two years.

CHAIRMAN GROUT: Is there a second to this motion; Mark Gibson. Is there discussion on the motion? Bill McElroy.

MR. WILLIAM A. McELROY: Mr. Chairman, I would have to speak against this motion. I sympathize with the direction that Dan is trying to go, but I know for Area 2 Rhode Island fishermen, to suggest at this point that the method of business,

which has been perfectly legal, accepted and used and utilized for many years, would create a huge problem for these people.

To turn this around at this point and tell a man that has been running a business for 20 or 30 years in fashion, perfectly legal, all of sudden he can't – I just can't support that. I am sympathetic to what Dan is trying to do, but it creates too many hardships for my fishermen. Thank you.

MR. SIMPSON: I will also just speak in opposition to the motion for many of the reasons that Bill pointed out. We struggled with this stuff in Connecticut on our own, but there are several people now that are the fishermen that haul the traps. They don't own the boat. I also just think these are government roles and not commission roles.

The federal government needs to – their entire system is different than permitting the boat. I am not about to tell somebody from Connecticut when they're fishing in federal waters what they can and can't do. I don't want to get into that business. I realize that there are circumstances where we have the authority to do that, but this owner-on-board stuff wasn't tolerated well by the state legislature.

We started there and now we have so many exceptions that there is no practical purpose for it because people have significant investments in their boats and they can't always be on it. If Massachusetts wants to do this in Massachusetts, that is fine, but we have a different way of doing it; and I think what we have heard is the federal government has an entirely different way of doing it.

MR. ABBOTT: Mr. Chairman, I'm not in support of this motion either. Again, I'm sympathetic to the Commonwealth's position, but I don't see this as managing the resource but managing the business instead. I don't see any great benefit to us by getting involved in this at this time.

MR. GIBSON: I seconded the motion for discussion, but I also think given how many times the word "complex" has been used here at that the table, that this warrants some public discussion as well, and that would be the only way we could get it. Thank you.

MR. THOMAS FOTE: I am looking at this and I hear currency and I hear this going around and it reminds me of IFQs. We don't have IFQs in individual fisheries. Transferable quotas in the lobster fishery – and it concerns me that we're getting into the economics so deeply. I mean, we're here to

manage the fish and we're here to manage the number of traps.

When it comes to the economics and how do we deal with it, that is a whole 'nother ballgame. I have seen that happen. I was around during the surf clam debacle – that I still call debacle after all these years. We have been managing to stay away from it in New Jersey, and I think if it is up to a state to basically – or the federal government if they want to run it, but I don't think this is an area where the commission should start going into – we have enough problems managing fish and what we're doing here without starting to manage the permits and everything else when it comes to the economic value of it. I think that is up to the states and the federal government to do.

CHAIRMAN GROUT: Is there further question? Okay, we will take vote. Since this is a new motion, I am going to take comments from the public on this. Dick.

MR. DICK ALLEN: My name is Dick Allen. On this issue I am speaking for myself as an Area 2 federal permit holder and a Rhode Island license holder. I have had some experience with owner on board, which gets very confusing whether you're actually talking about the boat owner being on board or the permit holder or the license holder.

I would urge you not to try to move forward with this until you really – if you want to establish a working group and study it and figure it all out, that is one thing. I think you'll find that it is much more complicated. I suggest that Dan's good experience and the experience in Maine may be because they have never really tried to enforce what they think they've got to the letter of the law.

If you read some of the rules associated with some of the programs in Alaska and see the pages upon pages upon pages in order to make sure the people aren't talking the system and things. This is not a simple thing to do. As Bill mentioned, it will disrupt a lot of businesses. When Rhode Island put their owner on board, which was the boat owner, majority owner of the boat had to be board, at the time I had a partner who was also a licensed lobster permit holder, a license holder in Rhode Island.

We used to share the operation of the boat. After that law went into effect, we could no longer do that in state waters so our whole business plan was completely disrupted. From my point of view, there was no reason not to allow two licensed lobstermen

to share the operation of a boat. What you did was force him to go get his own boat, put his own set of traps in the water, and you ended up with more fishing effort. I could go on and on.

I could give you a whole list of potential problems. How is an enforcement officer going to know who is the actual owner of a boat if you go to the boat thing? If you have a permit with an individual and no corporations, again you're talking about disrupting the whole federal system. I think it is a pretty complicated and pretty disruptive issue. If you're going to do anything, I would say study it pretty thoroughly first. Thanks.

CHAIRMAN GROUT: Back to the board; do you need time to caucus on this motion? Dan.

MR. McKIERNAN: I wonder if I can withdraw the motion and ask for a study group.

CHAIRMAN GROUT: Does the seconder agree to withdrawing? Well, actually it has been thoroughly discussed so at this point it is the motion of the board. Are there any objections from the board to withdrawing this motion?

MR. AUGUSTINE: I would stick by Roberts' Rules, Mr. Chairman. It has already been discussed and been presented, so it would either be an up or down vote or table it.

CHAIRMAN GROUT: I would agree with that; you're right. We need to vote on this. Let's move forward with a vote. All those in favor of the motion, two in favor; all those opposed, nine opposed; any abstentions; any null votes. **The motion fails two to nine to zero to zero.** Would you like a study committee, Dan?

MR. McKIERNAN: Please, yes.

CHAIRMAN GROUT: Can I get some volunteers on the study committee?

MR. McKIERNAN: Can I request Terry Stockwell?

MR. STOCKWELL: I will help you out, Dan.

CHAIRMAN GROUT: Anybody else in Area 2 that wants to address this? Bob from the federal committee want to be on this committee? All right, Mark, Bob and Terry. Anybody else? The study committee has been appointed and you're chairman, Dan. All right, are there any other changes or deletions that people want to make? Bill McElroy.

MR. McELROY: **Mr. Chairman, I would like to make a motion that we include another option in Section 3.1.1, talking about the trap allocation transfers for partial transfers. I would like to add an option that would recommend that the LCMT option of delegating on an annual basis which area would be fished.**

What I'm trying to do is get that option in there so a fisherman would have the ability to choose on an annual basis the two areas that he would wish to fish. Rather than changing the Option 2, we're adding an additional option.

CHAIRMAN GROUT: So, you're only adding it, first of all, to Option 2 of the partial transfers, the 3.1.1, so that is the initial motion you have made here. It is Option 3?

MR. McELROY: Well, it is 3.2.1 also. Well, that is for Area 3, so just for Area 2.

CHAIRMAN GROUT: Do you want to apply it also to Area 3, the 3.2.1?

MR. McELROY: Yes.

MS. KERNS: And I believe that Bill is asking for additional options. He is not going to change the current option, but he wanted to make a whole brand new option; is that what you had told me, Bill?

MR. McELROY: That is correct, an additional option rather than a change of an option.

CHAIRMAN GROUT: So this will be Option 4. Once we get the motion up here and cleaned up, I will look for a second unless there is somebody ready to jump in right now. Are you seconding it, Dennis? Dennis Abbott seconds.

MS. KERNS: Just to be clear to everyone, Option 2 under both of these, Areas 2 and 3, partial transfer, multi-area designation does not allow them to change the area that they're fishing when they're allowed to choose two areas. What Bill is suggesting will allow them on an annual basis when they purchase their trap tags to declare which two areas that those traps have history in to fish.

It is just like if you were a federal fisherman, you declare which areas you're fishing on your permit each year. We envision this as a similar process. For some areas, if they already do this, for federal fishermen this may be less of an administrative burden because they're already doing so; but on the

states, some of them only allow those fishermen to fish in one area, so there potentially be impacts to those states.

CHAIRMAN GROUT: Okay, is that the motion? Okay, I'll let you speak to it first.

MR. McELROY: Basically what we're trying to do here is get consistency. Currently if you have a full business transfer, those rights that we're trying to protect for a partial business transfer are currently allowed. It seems incongruous to suggest that if a fisherman buys an entire permit and an entire business that has multiple designation areas he is able to retain that; but yet if a fisherman is only going to buy a partial allocation, then he would forfeit those rights.

That seems to us to be a little bit unfair in that essentially if a person is wealthy enough that he can afford to buy a whole business, then he can have multiple areas; and if the poor fellow is trying to build himself, he is being told he has got to pick and choose and he can't do that. That doesn't seem to me to be a sense of fairness. We need to treat both entities the same and I think that this would be the way to do it. Thank you.

MR. STOCKWELL: Mr. Chairman, just a question to Bill through you; Bill, this was a recommendation from the LCMT 2?

MR. McELROY: Yes, the LCMT 2 and 3 both recommended that this be done.

CHAIRMAN GROUT: Is there further discussion on this motion? Bill Adler.

MR. ADLER: Once again, if this motion passes, it needs to be explained that it is different from Option 2. Otherwise, people will say, well, this isn't the same as Option 2; so if it isn't there needs to be a line or something that explains the difference between these two because they sound the same.

CHAIRMAN GROUT: I agree and I'm sure staff will make every effort to make it clear in the document. Is there further discussion? Are you ready to caucus? Do you need time to caucus? I will give the states 30 seconds to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: While they're doing that, I will read the motion into the record: move to include another option in Section 3.1.1, trap allocation

transfers for partial transfers and Section 3.2.1 to add an option that allows the areas fished to be declared on an annual basis. Motion made by Mr. McElroy; seconded by Mr. Abbott. Okay, all those in favor raise your hand, ten in favor; any opposed; abstentions, 1; null votes, none. **The motion carries ten to zero to one to zero.** Are there any other changes that would like to be made? Ritchie White.

MR. WHITE: **Mr. Chairman, I would like to add in 3.2.5 an Option 3. It would read aggregate ownership trap limit. No single company or individual may own traps greater than five times the single ownership cap if they have not already accumulated them prior to the National Marine Fisheries Service publishing a present-day control date. Therefore, should an individual owner be in excess of the aggregate ownership cap before the control date is published, that owner will retain his existing trap ownership and that owner may not increase trap ownership once the National Marine Fisheries Service control date has been published. Any ownership with an accumulation of fewer traps than the aggregate cap at the time the control date is published may not exceed the aggregate ownership cap.** This was recommended by the LCMT.

CHAIRMAN GROUT: Is there a second to that motion? Pat Augustine seconds it. Is there discussion on this motion? Seeing none; are there any comments from the audience on this motion? Richard Allen.

MR. ALLEN: Now, on this issue I am speaking on behalf of myself as a shareholder in Off the Shelf, Inc., which owns two federal permits, and for Shaft Master Fishing Company, Newington, New Hampshire. I think this gets at the issue that I found confusing in the original language with reference to the 2003 date and things like that.

We have had some discussion about that. I think it is important to recognize while the commission tends to think about the things that it has adopted, in fact the industry has been operating with no ownership cap in Area 3 because it was never promulgated and never published so people have just been doing business and going about making their investments.

I think we need to be clear that anything that is done from this point forward needs to have a new control date and needs to have a grandfather provision that recognizes those investments that people have made. In terms of the ownership interest, I was kind of surprised at Bob Ross' comments on the other federal

rules because the scallop fishery has had a long-standing ownership cap, the federal sea scallop fishery.

All the permits, whether it is sea scallop or any other federal permit – now I just filled out three them, and they all require a listing of any person with an ownership interest in that permit. The Off the Shelf, Inc., for example, has five shareholders, and I had to list every single individual. It doesn't ask you how much; just any interest.

They have this list; NMFS is keeping track of everybody with an ownership interest; and they have actually enforced the ownership cap in the sea scallop fishery and made people divest themselves of permits if they have an interest in more than the cap. I think that is entirely doable. It seems to be a well-established procedure. Thanks.

CHAIRMAN GROUT: Does anybody else from the public wish to speak on this? Okay, back to the board; do you have further discussion on this motion? Okay, I will give you 30 seconds to caucus on it.

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: Okay, let's vote. All states in favor of this motion raise your hand, ten in favor; any opposition; any abstentions, one abstention; null votes. **The motion carries ten to zero to one to zero.** While we're in this section, I have a question as I was reading through the document, and I am going to pose this question to Bob Ross.

We have an Option 2 here currently in the document that says no single company or individual may own or share ownership of more than five qualified LCMA 3 federal permits and cannot own more than five times the individual permit cap. Now, there are individuals or corporations that currently own more than five permits right now.

My question for you is if the commission was to pass this option and make a recommendation to the National Marine Fisheries Service, this would really require someone getting rid of permits that he already has or they have or a company already has. Is that something that the federal government could actually do because this applies to Area 3, which is what you're going to be implementing? Can you tell a corporation or an individual you've got to get rid of permits you already have?

MR. ROSS: No, we would not retroactively go back and take permits away. Normally the benefit of the

control date is to notify all our impacted permit holders to be aware that things may change, and in this case it would be specific to ownership changes. As was in some of the earlier text, I think there would be a need to address some type of grandfather clause.

CHAIRMAN GROUT: Given that, I would suggest to this board that we have got an option in here that is not implementable and that maybe we should consider removing that particular option considering the option that we just passed does include a grandfather option, and then, of course, we have the status quo. Pat.

MR. AUGUSTINE: To that point, Mr. Chairman, would it not make sense to go ahead and leave it in and add a clarification point as to what NOAA's response was to it? In other words, it was talked about, thought about. This is what we thought we'd like to do; however if you accepted it – we could also put after it “not recommended” or not approved by the board, but considered. Would that be appropriate because it will come up sooner or later again, as long as it doesn't open a can worms.

CHAIRMAN GROUT: The only concern I have is that we have something in here that is not implementable as an option, and so the public will be commenting on that. Even though we could potentially put it in that but it is not something that – clearly, we could pass it, but it would have no weight; and so that is my concern here is having an option that is not viable. It won't be implementable.

MR. AUGUSTINE: **As a followup, Mr. Chairman, I agree with you wholly, and I would suggest we follow your suggestion on that and remove it from the document.**

CHAIRMAN GROUT: Is that a motion?

MR. AUGUSTINE: **I so move.**

CHAIRMAN GROUT: Is there a second to that? If you look at Option 2 here under 3.2.5, there is an option which will limit Area 3 permit holders to five permits. We currently know that there are some companies that hold more than five permits, so it would require that if this were implemented, they be asked to get rid of those permits.

The National Marine Fisheries Service said that is not something that is implementable. That is why I'm suggesting that we might want to remove this from the document or least have a motion to do that because it is not something that could be

implemented. We have a motion to remove it and do we have a second. Ritchie White seconds. Do we have discussion on this motion? Ritchie White.

MR. WHITE: Mr. Chairman, what would status quo be, then?

CHAIRMAN GROUT: Status quo is what is in here but we had already requested that anybody that currently owns more than five would be grandfathered in; may retain the number that they had back in 2003. Are there any comments from the public on this? Bonnie.

MS. SPINAZZOLA: Mr. Chairman, yes, I would agree that is not implementable so it would make sense to remove it, but this is where I recommended or the Area 3 industry recommended that you change the currency to just talking about traps rather than just traps and permits.

CHAIRMAN GROUT: And we already passed a motion to do that.

MS. SPINAZZOLA: For the entire document?

CHAIRMAN GROUT: For the Area 3 in this particular – the last motion that passed included that.

MS. SPINAZZOLA: Okay, sorry I missed that.

CHAIRMAN GROUT: Okay, is there further discussion on this motion? Dick Allen.

MR. ALLEN: I just wanted to point out that the way it stands I think you will confuse the public because you have the language – the next paragraph says that you will ask NMFS to establish a new control date, but why would you do that if in fact you're not assuming that there is going to be a grandfather clause in there. I think that will just be confusing if you don't pull it out.

CHAIRMAN GROUT: Well, didn't we just pass an option that said people that –

MR. ALLEN: Right; and I think the one that you adopted takes care of that; but I think if you leave Option 2 in there with the paragraph immediately following that refers to the control date and then you have another Option 3; that would really confuse people. I recommend that you take it out.

CHAIRMAN GROUT: Is there further discussion on this motion from the board? Okay, we will vote on this. I will give you 20 seconds to caucus on this.

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: The motion is move to remove Option 2 in Section 3.2.5. Motion made by Mr. Augustine; seconded by Ritchie White. All those in favor raise your hand, 11 favor; that is a unanimous vote. **The motion carries.** Anything else? Dan McKiernan.

MR. McKIERNAN: In light of Dick Allen's comments about the need to disclose any interest, it seems to me that is what is lacking in the addendum is the definition of what ownership means. I don't know if this is a heavy lift at this stage, but shouldn't the public be commenting on what it means to be an owner?

CHAIRMAN GROUT: No, there isn't anything in here so should we try and develop a definition of what an owner is?

MR. McKIERNAN: I think you should. As you probably know, we have one groundfish character in New Bedford who owns over 30 permits and dozens of boats, but he has at least 20 unique corporations. That is the end game when you put those kinds of rules in. Unless you have defined it as Dick has defined it, then it is open.

I guess my follow-up question is do we anticipate a situation where someone who is a member of a corporation or a corporation must disclose on an annual periodic basis or whatever anytime the membership changes or is it up to the government to sniff that out and say, "Aha, look at that, I've found a membership change in the corporation.

MR. ABBOTT: To that point, didn't we just appoint a subcommittee of you and Terry and a couple others to look at this?

MR. McKIERNAN: The subcommittee was to look at an owner-on-board rule for Area 2. This is about Area 3 and the existing rules. If you heard NMFS say why didn't they adopt a rule that is ten years old in an addendum, it is because this has never been resolved.

MR. ABBOTT: Could we not add that as a task for your subcommittee?

MR. McKIERNAN: Certainly.

CHAIRMAN GROUT: Bill McElroy, you had some other things you would like to address. We will get back to that. I think that is something we need to

address as we're deciding whether to move forward with public comment on this.

MR. McELROY: Mr. Chairman, I would like to make a motion to delete Section 3.1.4, controlled growth, and strike that from the document completely.

CHAIRMAN GROUT: Do we have a second to that motion? Second by Dennis Abbott. Is there discussion on the motion? Pat Augustine.

MR. AUGUSTINE: Mr. Chairman, this is a public information document. Is there something so onerous about that that it shouldn't be aired by the public? It sounds like we're trying to knock out things that obviously we don't like or don't think should be a part of it. Remember, this is a public information document and we're trying to get the broadest brush of information from the public and responses we can get. I would be kind of opposed to doing that unless there is a real reason why there is no applicability or interest in the public commenting on it.

MR. McELROY: Mr. Chairman, I would like to respond to Pat's question, if I could. The biggest problem that we saw with controlled growth and it turned out to be a unanimous decision of the LCMT not to want to go forward to it is that it creates a situation if you pick any particular number and tell an individual that through transferability he is allowed to buy a certain number of pots to try to build himself back up to the maximum limit that is allowable law; and now that individual has to go out and spend good money to do that.

And to suggest to that person that they can only activate those qualified pots that are not qualified – it is not a new addition to the fishery, but he can't put them all into play at one time, you're telling the guy he has got a lot of money to buy and he can use some of the pots this year and he has got to wait until next year to activate the next batch of them; it creates an undue economic hardship on the individual and it doesn't offer any conservation value because traps are already fully qualified and authorized through Addendum VII. Thank you.

MR. AUGUSTINE: Thank you, Bill, I appreciate that description. Then I would have to ask NOAA if they had any intention of dealing with that in the future? I mean, they're working on a lot of things in the lobster plan, but here they're being asked the controlled growth provision will be effective in the

same years that NOAA Fisheries implements transferability and once annually thereafter.

So we're back to the basic question is there any near-term deadline or date that NOAA can address that and will they in time? I don't know if Mr. Ross can answer that question. I'm not trying to put him on spot, but here is another case where we're going to rely on a federal entity to take action based on something we have agreed to, such as one of our previous amendments.

CHAIRMAN GROUT: Bob Ross, can you answer that?

MR. ROSS: When we were working within the plan development team in this process, we have already moved forward with our analysis for this initial Area 2 and Outer Cape Limited Access Program and then the Area 2, Outer Cape and Area 3 transferability program. This is that proposed rule that I indicated is coming out in the next month or so.

We did not analyze – and as you are aware, this whole issue of controlled growth is fairly new. Again, I go back to some of the public comments we provided on Draft Addendum XVIII that also contained reference to controlled growth. At that point we indicated that we would be unable to implement controlled growth in the initial transferable rulemaking. No, we would not be able to implement these measures in the schedule indicated here.

MR. AUGUSTINE: Thank you, Mr. Ross. So, I guess the basic question is in the information that you folks have gathered relative to a controlled growth provision; do you see anywhere in the future where this might be something that you would look at? If not, then I would agree that we should remove it. I don't know if you can respond to that or not. I mean if it is a dead issue with NOAA, then it is a dead issue and I think we would be right in removing it.

MR. ROSS: It is difficult for the tail, in this case NMFS, to wag the dog here. Obviously, lobster management is a bottom-up approach where the industry, through the LCMTs, has been very effective and very supportive of measures that they have moved forward through the system.

In this case I don't believe that there was consistence across all LCMTs to support a controlled growth mechanism in my discussions with the LCMTs during several meetings of multiple jurisdictions. The federal government had concerns about

constraining the intent of a transferable trap program by setting – not arbitrary but setting caps on what can be turned on in any given year.

Again, I would not say that we do not support it. We would support any recommendations coming from the board. However, it was my understanding in meetings I was at with the impacted Area 2 and Area 3 industry that the interest in a controlled growth measure had lost its traction.

CHAIRMAN GROUT: Is there further discussion on this motion? Okay, then let's vote on this. I'll give you ten seconds to caucus on it.

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: Okay, all those in favor raise your hand; all those opposed; abstentions; null votes. **The motion carries nine to zero to two to zero.** Tom.

MR. FOTE: I was listening to the back and forth and you let Pat go about four times as usual. I apologize. Our job is to basically take a document and whittle it down to make it easier for the public. This document is so confusing to begin with that I have hard time sitting here a lot of times because I don't deal with lobster fisheries on a day-to-day basis like the former governor's appointee from Rhode Island, Dick Allen.

I get a little lost, but we try to give them as much information in the document that we can. If we really look at a document and said it should be cut out, that is a way of going so I approve that method. I'm not sure what we're doing here. That is why we abstained. It is very confusing to me because it looks like it is a paradox.

You have got one side saying this and the other side saying this, and I'm not sure which side is going to win. I find it extremely confusing and it is very hard to vote if I'm having a problem with it. I think maybe the lobstermen understand more because it is their day-to-day business, but I'm having a real hard time trying to figure through all these ins and outs.

MR. McELROY: Mr. Chairman, I have one last change. **It is under the options for full business sales, and Option 3.1 – Toni already has the language there – we would like to add that as an additional option.**

It reads as follows: Areas fished on a multi-LCMA permit – and this gets to some of Tom Fote's and everybody else's confusion and adds a

little more to it – the recipient of a trap allocation from the permit that has a multi-LCMA trap allocation would retain the multi-LCMA history. The recipient could elect to fish in any two of the LCMA areas that the trap history allows. Fishermen would annually declare the areas fished when applying for trap tags. The recipient would be bound by the most restrictive rule for the areas that are designated on the multi-LCMA permit. The history of the trap will be retained in the trap database.

CHAIRMAN GROUT: Is there a second to this motion? Bill Adler seconds. Is there discussion on the motion? Go ahead, Bill.

MR. McELROY: I hope I have this right, but I think that basically this is cleaning up the language to make what we have done for Area 2 on those multi-LCMA areas consistent for Area 3. This doesn't really – it looks like we're doing the same thing over again, but the first one we did was for Area 2 and this one is for Area 3 basically.

CHAIRMAN GROUT: Is there any discussion on this motion? Dennis Abbott.

MR. ABBOTT: I think that maybe we should let this go out for public comment. There is a lot to it. In looking at the hour of five minutes to twelve, I hope we can move this question right along.

CHAIRMAN GROUT: Is there discussion? I will go to the audience quickly. Bonnie.

MS. SPINAZZOLA: As Bill said, that is strictly for compatibility so that you're going to have Area 2 and Area 3 all doing the same thing.

MS. KERNS: I just want to confirm that I am correct. You're actually incorrect, Bonnie. You are not having the two areas do the same thing. Area 2 did not ask to have this option added; just Area 3 asked to have this option added. Only Area 3 would be doing this.

MS. SPINAZZOLA: And that is to have the full transfer?

MS. KERNS: It is for full business sales only of multi-area fishing. Area 2 only asked for two options and that was status quo, to have all the traps retain their history and go forward; or, Option 2, which is to only be able to pick one area fished. Area 2 did not ask for two areas fished under full business sales. Only Area 3 did.

MS. SPINAZZOLA: Okay, it was my understanding that for compatibility both areas were doing the same thing.

MS. KERNS: That was not what was asked of me.

MS. SPINAZZOLA: Okay.

CHAIRMAN GROUT: Okay, is there further discussion on this motion? Pat Augustine.

MR. AUGUSTINE: The definition of full business sales; that is economic as far as I'm concerned. What does it mean?

MS. KERNS: A full business sale is your entire permit, boat – it is your whole kit and caboodle. It is everything that you sell. It is defined in Addendum XII.

MR. AUGUSTINE: Thank you. I just have a hard time supporting this based on that fact. Thank you for that clarification.

CHAIRMAN GROUT: Is there further discussion from the board? I will go back to you one more time, Bonnie.

MS. SPINAZZOLA: That is basically status quo with the federal fishery that we have right now. Under a full business transfer, we would have all the LCMAs. The reason I said compatibility is because I thought that is what Area 2 was planning to do and that they would be doing the same. As far as federal rules, that is what we have now; but under ASMFC it is status quo so it is one area. We would request that it would be the same as what NMFS' rule is now.

MS. KERNS: Bonnie, this option is asking for two areas; the fisherman that is buying the traps to be able to retain the history in two areas. Status quo is currently that when you –

MS. SPINAZZOLA: One area, right.

MS. KERNS: No. No, status quo is when you have a full business sale, that fisherman that buys the traps can pick any of the areas that trap has history in. When you buy a full business, all of the history goes to the buyer. That is what status is and that is what the National Marine Fisheries Service does currently as well. We are on the same page. This additional Option 3 would only allow for two areas to –

MS. SPINAZZOLA: Two LCMAs to retain –

MS. KERNS: – retain history.

MS. SPINAZZOLA: – the permit.

MS. KERNS: And then any other –

MS. SPINAZZOLA: I'm sorry; if it is not compatibility, which I thought that it was going to be, I would say don't bother. It is not meant to go on.

CHAIRMAN GROUT: Hearing that; do you want to withdraw the motion or do you want to keep it in? It is your choice, Bill.

MR. McELROY: **If Area 3 doesn't want it and doesn't support it, then I would withdraw it. I thought that was what they wanted. I misunderstood; I'm sorry.**

CHAIRMAN GROUT: Does the seconder agree to withdrawal? Okay, so this is withdrawn.

MR. AUGUSTINE: Mr. Chairman, we have beat this document to death. Are you ready for a motion to approve this Addendum XXI for the public?

CHAIRMAN GROUT: Not quite yet; I had one other person that would like to make a suggestion here. Ritchie White.

MR. WHITE: Mr. Chairman, this is a question and a process question. Since the reason for doing this document and the preamble is scale the Southern New England fishery to the size of the resource, my question is should this document not go to the technical committee to say that we are accomplishing what the goal is?

MS. KERNS: We can take it to the technical committee to give their advice to the board on that issue. Also keep in mind that this document was also to look at transferability rules and to refine those and that a lot of the scaling happened in the first iteration, which was Addendum XVII, which did all the trap reductions. This is trying to attempt to have some of that latent effort not turn into additional effort through some of these rules.

CHAIRMAN GROUT: I have another question for the board here, and this relates to what Dan had brought up here. We have a document here that has several options here that refer to an ownership, an ownership cap, an aggregate ownership cap. What has been pointed out is we don't have a definition of what an ownership is.

I particularly want to ask the National Marine Fisheries Service, because this is going to apply to Area 3, too, and do we need to – before we move this forward for public comment, do we need to include what the definition of an ownership is or can we just say something like it is a permit?

MR. ROSS: Mr. Chairman, I believe the same issue surrounds our dilemma with this as they do with this whole issue of identifying ownership for a corporation. If we're expected to implement this measure at the federal level, we have the same dilemma we face with the states having owner/operator and the federal government having multiple types of ownership.

That is where I was discussing the possibility of some kind of working group or study committee here, which I understand I am now a part of, but, yes, it is my understanding, if I understand the question correctly, that this issue and the other issue are directly related and it would be a challenge for us without a consistent commission approach to accurately identify ownership with dual permit holders, state and federal permit holders.

MR. AUGUSTINE: To that point, it seems like we're not ready to address this issue and have it go out to the public. My question would be when could that group meet and possibly put together this definition, if you will? If in fact they can do that between now and the next meeting, maybe we could get that through an e-mail.

If that would be appropriate, then we can go forward with releasing this document. Otherwise, I would suggest we postpone accepting this document for the public until the next meeting. It sounds like that is the dilemma, Mr. Chairman. We have come a long way today, but we still have that definition of ownership that is going to be a control issue. Whatever you want to do, Mr. Chairman; do you want to postpone this until the next meeting or until we get the definition or would you prefer to go ahead and approve this, but we're still hung out to dry on the definition.

CHAIRMAN GROUT: My thought was without this definition, we shouldn't be going out to the public because we need to have that definition aired in front of the public so that they can make that. Now, that is my thought and I am willing to take any input from the board on that. Tom.

MR. FOTE: My concern here is that we start revisiting the whole document again at the next

meeting when we're just considering the definition. I would like to basically lock in these proposals to go to public hearing with the addition of the clarified definition. We just spent three hours going over this document; and every time we get into lobsters, it winds up being three hours to discuss the document and reiterate what we basically said at the meeting before.

If there was some way of doing that; I have no problem postponing it until the next time, with the clear understanding that we're not going back over the whole document to make more changes because somebody wants to tweak this and tweak that. Again, this is a public hearing document, but that we will just wait for the definition and going out. I don't know if you can do that, Mr. Chairman, but I would like a reading on that because I'm just concerned that we will spend another three hours going over the same document because somebody read the document and says, by the way, we should do it this way.

MR. ABBOTT: Tom Fote's watch runs a little different than mine. I think we started at 9:30 so we have only been here a total of two and a half hours. It must be New Jersey time. A moment ago Pat Augustine was ready to move this out for final vote, but I don't see any emergency or need to press on immediately with this document. I think it would be wise for us to let staff incorporate the things that we have gone over today and do what you have to do to get the definition and then let's deal with it in May.

MR. McELROY: My first wish would be that we approve this document and send it forward. I think in my own view the definition of ownership is going to be quite problematic, and I'm not at all optimistic that we will have a final resolution on that thorny question in that short amount of time.

I am reluctant to ask to delay this addendum. The first half of the addendum, Addendum XVIII, has already been out and passed and is the law of the land. I think we need to move forward. The question of the ownership I think can be dealt with at a later time because I don't see a way to get it done quickly. Thank you very much.

MR. KERNS: In terms of the timing of the document, what we have been focused on is trying to make sure that we develop regulations in time to make recommendations to NOAA Fisheries on upcoming rulemaking. Bob, please correct me if I am inconsistent in what we have talked about before.

I believe that with what is coming out in the rulemaking now, we had talked about if we made any significant changes we would have to do an additional new rulemaking, so everything in this document NOAA Fisheries would have to do a new rulemaking; and so that wouldn't happen until later down the road, anyway, and so I don't think that we would be delaying any recommendations to NOAA.

Now, there may be some applications to this where some of the states have implemented transferability rules for state-only permit holders, not dual or federal permit holders, where a delay may change some things, but those states have been fairly consistent on how they're doing their rulemaking there, so I'm not sure delaying would be significantly impactful in terms of the process that we have been forward all along.

CHAIRMAN GROUT: Is that your take on it, Bob, that the stuff in this package would be in a different rule-making package?

MR. ROSS: Yes, that is correct.

MR. STOCKWELL: Mr. Chair, as a volunteer on the subcommittee, I think that we have some work to do and we can come back at the May meeting and better inform the board as a whole, so **I am going to move to postpone final consideration of Addendum XXI until the May meeting.**

CHAIRMAN GROUT: Is there a second to that motion? Second by Bill McElroy. All right, is there discussion on that motion? I will go to the public first and then we will come back to the board. Bonnie.

MS. SPINAZZOLA: Earlier when I mentioned traps as a currency – and I don't think it was approved – what I meant is that if you get rid of the word “permit” in the whole document and use strictly the word “trap”; and if you can describe an owner as someone who owns X number of traps; so if you own 1 percent of – if you're a corporation that owns all the traps that you can own and then you own 1 percent of somebody else's, you can't own somebody else's.

You can only own your number of traps, total finite number of traps. If you say “permits”, it could stand for any number of traps. That is why I wanted to just go to traps because any owner could only own X number of traps and they couldn't own anything else, period. That is why we were talking about in Area 3 the aggregate number of traps, not the aggregate

permit; just the trap cap. It is just a recommendation or suggestion.

CHAIRMAN GROUT: Well, maybe that is something that our committee can take into consideration and we can get that off the record to the committee. I appreciate that but it still seems you have to have a definition of the ownership; who is the owner of the traps. Dick.

MR. ALLEN: If it is any help, I think you're in the same position that the council was in when they established the ownership cap for sea scallop permits back in 1994. I think they passed some language pretty similar to what you have got in your addendum now. The National Marine Fisheries Service actually implemented it and their approach was to say anybody with an ownership interest and that is why they have each permit holder.

Somebody mentioned about whether you would let NMFS figure out whether there had been a change in ownership and chase people around or what, but actually it is every year when you fill out your federal permit application, you have to list everybody with an ownership interest. NMFS probably has a little computer program that checks and sees whether there are people that own more than that cap.

I mean, it is fine if you want to go in and figure out your own definition; but if you wanted to say, well, you know, we think the way that NMFS has handled it for the sea scallop fishery is adequate for our purposes, they would probably do it the same way. I think they did it first in 1994 for the sea scallop limited access and then they did essentially the same thing with a little different numbers for the sea scallop general category IFQ program. They have been through this before and I think they've got a way to handle it.

CHAIRMAN GROUT: Maybe NMFS can bring that information to the table of the subcommittee. Okay, to this motion, is there any further discussion? Seeing none; I will give you ten seconds to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN GROUT: All in favor raise your hand, ten in favor; any opposed; any null votes; any abstentions. **The motion carries unanimously.** We do have a couple more items on the agenda. Okay, go ahead.

MR. HIMCHAK: Okay, I don't know the exact implementation date of the second half of the

Southern New England rebuilding, but we're talking about Areas 2 and 3 transferability measures. It is my opinion that we also have to deal with Areas 4, 5 and 6, and I am unaware of any activity that has been taking place since we put in the 10 percent reduction in exploitation.

My question becomes who administratively – I mean, how are we going to – we're starting from Day One and we're listening to this discussion on this business model, who is going to start developing the program for Areas 4, 5 and 6? Has anybody made any effort? Then my question to Bob Ross would be on the same issue on transferability measures; where do we cross swords on Areas 4 and 5 in Area 3? Is it going to be a complicated model like this or is the process much simpler? We haven't been moving on this 25 percent reduction in trap allocations, period, to my knowledge.

MS. KERNS: Pete, the board directed all the Southern New England areas to scale their fisheries to the size of the resource. You are correct, Areas 4, 5 and 6 have not come forward with plans. I think at every meeting I have mentioned that those LCMTs have yet to come forward with their compatible plan that Areas 2 and 3 have done.

The board hasn't given the plan development team anymore direction than to continue to ask those areas to develop their plans so that the plan development team can work with them to put an addendum in place. We have tried to work very closely with Areas 2 and 3 LCMTs to make sure that we're putting together a plan that is going to work with the history of their fisheries. That is what the plan development team would do for those other areas, but we need an initial response from the LCMTs in order to get that conversation going.

MR. HIMCHAK: So just as a followup, essentially we're putting states on notice that haven't addressed the issue to start convening the LCMTs, and this is not a simple task. There are a lot of states involved in these three areas.

CHAIRMAN GROUT: Well, we have had them meet before so do you want to take the lead on that?

MR. HIMCHAK: I would rather retire.

CHAIRMAN GROUT: Yes, we do need to get 4, 5 and 6 to start meeting, and I would encourage the state directors from the states that have members in that LCMT to start working on this. There is an addendum that we had passed to take management

action here, and I would hope that you folks will take the lead. Dave Simpson.

MR. SIMPSON: I think I have indicated before we don't really have any intention to try to address this because despite repeated requests to the technical committee, we haven't gotten any advice at all on what numbers of traps mean in terms of fishing mortality or scaling to the fishery or any of that. We're focusing on the 10 percent reduction that is required in 2013.

We will do that. New York is ahead of us in terms of proposing legislation because they're going through a legislative process and we will go through a regulatory process. I think it makes sense for us to follow so that we get the same dates. This entire discussion today has to do with economics and transferability which may be a choice for other jurisdictions but not something that I think we're interested in pursuing further.

Frankly, I not only don't see where there is conservation here; I could see where this whole process will further concentrate traps in the hands of the most active fishermen and actually increase effort. Just in terms of our update, we don't have any activity at all on scaling the fishery to the size of the resource, which is almost gone now, but we are fully intending on complying with the 2013 closed season.

CHAIRMAN GROUT: Okay, is there further discussion? We will now go to Item 7 on our agenda, Law Enforcement Committee Report. We had tasked them with commenting on the Area 1 v-notch definition.

LAW ENFORCEMENT COMMITTEE REPORT

MR. MARK ROBSON: At the last meeting of your board you had a discussion about this issue and had requested that the Law Enforcement Committee provide some advice or information regarding the enforceability of v-notch regulations among the various states or areas, LCMAs. We did have the opportunity to do that. The Law Enforcement Committee was meeting at the fall meeting in Philadelphia, so we did have a discussion there with all the members present.

In addition to that, in order to provide you with some crafted written guidance, we had a follow-up conference call with a good number of the members of the LEC to kind of flesh out this issue. I think you have all been provided a copy of our letter or

memorandum regarding v-notch issues. As with this discussion recently, this is not a new issue for the LEC or for you, I think.

They have commented on this issue twice before, both in 2004 and in 2006. In most respects our current comments reflect those prior views and guidance. In fact, we have attached some of those references from the previous memos to this current memo for you. Although there was quite a discussion among the different states about how enforceable these regulations can be, the bottom line is that the zero tolerance v-notch standard is enforceable; and in fact any standard you choose is enforceable.

What it comes to in terms of enforcement is the enforcement branch, the officers in the field developing a good understanding through training or guidance from their division as well as a good understanding among the law enforcement community, the courts and the fishermen themselves as to what standards are applied in terms of a zero tolerance or how much flexibility there is in a one-eighth inch v-notch.

That is the first recommendation or at least advice that we can give us that any of these are enforceable. Again, different states may have different issues. For example, in Maine and New Hampshire where zero tolerance has not been indicated as any kind of an enforcement problem; however, in the state of Massachusetts there have been indicated some enforcement issues, trying to apply either a zero standard in a court situation where it is not entirely clear what zero tolerance might mean in that particular state.

We have followed up with some discussion in the case of Massachusetts. A real further complication is the fact that they actually have three different v-notch requirements, depending on which area is being fished. That harkens back to some of the previous guidance that the LEC gave us that the overriding problem is not so much enforceability of a particular v-notch standard but the fact that you have multiple v-notch standards in some jurisdictions.

Massachusetts happen to be unfortunately the example of that where we talked about them having to deal with three different v-notch regulations or language, depending on the areas they're fished off of their waters. Coming back to that again, we fall back on our basic philosophy I guess that seems to come out on a lot of LEC comments and suggestions to the boards wherever possible standardization is key in

enforceability. This is an issue where when you have multiple standards, you're really going to be affecting the enforceability of that regulation. Mr. Chairman, that concludes my comments.

CHAIRMAN GROUT: Thank you, Mark. Are there any questions of Mark on the report? Yes.

REPRESENTATIVE WALTER KUMIEGA: Mr. Chairman, it was said earlier that what works for 95 percent of the U.S. landings ought to be looked at, and I think that certainly applies with the v-notch standard. It works very well in Maine and Maine fishermen support it, and I don't see why it can't work everywhere else. Thank you.

OTHER BUSINESS

CHAIRMAN GROUT: Is there any other discussion? Okay, we have one more item. Pete, you were asking about, under other business, a technical review of the most restrictive rule for Area 4 and 6.

MR. HIMCHAK: I just had a question. We did task the technical committee at the annual meeting to look at New York's predicament on the most restrictive rule as it applies to Areas 4 and 6. Toni has her hand up and maybe she will give me the response.

MS. KERNS: The technical committee did review the most restrictive rule as it applies to Areas 4 and 6 seasons. We worked very closely with New York on that issue. They actually, after the technical committee came back with their response, said that they would go ahead and implement the rule as it was.

The technical committee had recommended leaving the rule as it stood for a most restrictive rule. While New York's proposal would only impact a few individuals, the technical committee had recommended not making that change because then you're just making an exception just because it is a small number of people and not because of the impact that it would have on the conservation of the resource potentially.

As the technical committee had indicated it would be difficult for them to do an analysis of the impact. Because they don't have all of the information in front of them, we would have to wait until we had a couple of years of the season in place before they would be able to tell New York exactly what it meant. New York had said that's fine and started with their rulemaking and so we didn't need to bring

it up at the board meeting, and so that is why it was not on the agenda.

MR. JOHN CLARK: Mr. Chair, and I just bring up a brief issue that is kind of tangential to the Lobster Board here? Delaware has had an effort for several years to have its artificial reefs in federal waters designated as special management zones. This was approved by the Mid-Atlantic Council last week.

After the meeting they questioned us as to whether the special management zone would prevent commercial fishing on the artificial reefs in federal waters that Delaware has. They questioned us as to whether the special management zone would apply also to lobster fishing because that is managed by the Atlantic States Marine Fisheries Commission along with the National Marine Fisheries Service. I don't know if this is technical question just for ASMFC or whether it involves this board. Thank you.

EXECUTIVE DIRECTOR BEAL: I am not sure I have an answer directly for John, but my understanding is the Mid-Atlantic Council action removed all commercial gear from the special management zones and extends to 500 yards and not meters – it was a big debate yards versus meters – yards off of the artificial reef site. If it is defined as all commercial gear, I assume that would include lobster gear, but Toni and I can go back at the staff level and look at it and get back to the board.

ADJOURNMENT

CHAIRMAN GROUT: Okay, is there any other thing to come before this board? Okay, motion to adjourn. Any objections? Thank you.

(Whereupon, the meeting was adjourned at 12:28 o'clock p.m., February 19, 2013.)