

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

**Crowne Plaza Hotel Old Town  
Alexandria, Virginia  
May 5, 2008**

## TABLE OF CONTENTS

<b>Call to Order .....</b>	<b>1</b>
<b>Approval of Agenda.....</b>	<b>1</b>
<b>Approval of Proceedings .....</b>	<b>1</b>
<b>Public Comment.....</b>	<b>1</b>
<b>Review of Draft Addendum XII .....</b>	<b>1</b>
<b>Draft Addendum XIII.....</b>	<b>15</b>
<b>Massachusetts Conservation Equivalency Proposal.....</b>	<b>15</b>
<b>LCMA 6 Conservation Equivalency Proposal .....</b>	<b>25</b>
<b>Advisory Panel Report .....</b>	<b>26</b>
<b>PRT Compliance Reports.....</b>	<b>26</b>
<b>Stock assessment update.....</b>	<b>27</b>
<b>LCMA 1 Update.....</b>	<b>28</b>
<b>LCMT 3 Report.....</b>	<b>29</b>
<b>Other Business.....</b>	<b>32</b>
<b>Adjourn.....</b>	<b>33</b>

## INDEX OF MOTIONS

1. **Approval of Agenda by consent** (Page 1).
2. **Approval of Proceedings of January 29, 2007** by Consent (Page 1).
3. **Move to adopt Addendum XIII as an addendum that would replace Addendum III, Section 2.1.7.2, trap reduction schedule; and 2.1.7.3, annual trends for period and passive reductions** (Page 15). Motion by Dan McKiernan; second by E. Smith. Motion carried (Page 15).
4. **Move to implement a definition for Massachusetts LCMA 1 (state waters) for v-notch lobster** as any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as 1/8 inch, with or without setal hairs. V-notches female lobster also means any female that is mutilated in a manner that could hide, obscure, or obliterate such a mark (Page 23). Motion by Bill Adler; second by Mark Gibson. Motion failed (Page 15).
5. **Move that the Board accept these two proposals under the letter to the Board dated March 5, 2008 to adjust Addendum XI compliance dates and adjust LCMA 6 v-notch targets** (Page 26). Motion by Eric Smith; second by Pat Augustine. Motion passes (Page 26).
6. **Move to grand de minimis status for Delaware, Maryland, Virginia, and North Carolina**, and these states must comply with the maximum and v-notching provisions of Addendum XI (Page 27). Motion by Pat White; second by Rep. Dennis Abbott. Motion passes (Page 27).
7. **Move to accept the Technical Committee's new timeline for the stock assessment** (Page 28). Motion by Pat White; second by Pat Augustine. Motion passes (Page 28).
8. **Adjournment by consent** (Page 38).

## ATTENDANCE

### Board Members

George Lapointe, ME (AA)	Eric Smith, CT (AA)
Pat White, ME (GA)	Dr. Lance Stewart, CT (GA)
Rep. Dennis Damon, ME, (LA)	Sen. George Gunther, CT (LA)
G. Ritchie White, NH (GA)	James Gilmore, NY (AA)
Douglas Grout, NH (AA)	Pat Augustine, NY (GA)
Rep. Dennis Abbott, NH, (LA)	Brian Culhane, NY Chair/ Proxy for Sen. Johnson
William Adler, MA (GA)	Peter Himchak, NJ DFW, proxy for Chanda (AA)
Dan McKiernan, MA, proxy for P. Diodati (AA)	Roy Miller, DE, proxy for P. Emory (AA)
Vito Calomo, MA, proxy for Rep. Verga (LA)	Thomas O'Connell, MD (AA)
Mark Gibson, RI (AA)	Michelle Duval, NC, proxy for L. Daniel (AA)
Sen. Susan Sosnowski, RI (LA)	Harry Mears, NMFS
Everett Petronio, Jr., RI (GA)	

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

### Ex-Officio Members

Bob Baines	Joe Fessenden
Kim McKown	

### Staff

Vince O'Shea	Toni Kerns
Robert Beal	Brad Spear

### Guests

John Tulik, MA Environmental Police	John Davi, LISLA
David Simpson CT DEP	Chip Lynch, NOAA
David Spencer, AOLA	Brian Gervais, NOAA/NMFS
Bonnie Spinnazzola, AOLA	Bob Ross, NMFS - NE
Terry Stockwell, ME DMR	Joseph Mello, NOAA/NMFS
Janice Plante, Commercial Fisheries News	Arnold Leo
John F. German, LISLA	

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Suite of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, May 5, 2008, and was called to order at 9:00 o'clock a.m. by Chairman Brian Culhane.

### **CALL TO ORDER**

CHAIRMAN BRIAN CULHANE: Good morning, welcome to the Lobster Board Meeting.

### **APPROVAL OF AGENDA**

CHAIRMAN BRIAN CULHANE: You all should have an agenda in front of you. The first order of business is approval of the agenda. Could I get a motion? Dennis; seconded by George.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN BRIAN CULHANE: We have the proceedings from the February meeting. Motion to approve the proceedings? Dennis; seconded by Pat. With no objection the motions to approve the agenda and the proceedings are approved.

### **PUBLIC COMMENT**

CHAIRMAN BRIAN CULHANE: Now is where we get to the public comment portion. If there is anybody in the public who wants to comment on anything that's not on the agenda, we'll take a few minutes for that now. I don't see any hands; we'll move on. We'll take comments on the issues on the agenda as they come up. Now we're ready for the review of Draft Addendum XII. Toni.

### **REVIEW OF DRAFT ADDENDUM XII**

MS. TONI KERNS: Thank you, Mr. Chairman. On your briefing CD you received a summary of the public hearing comments, as well as the written comments that we received for Draft Addendum XII. Today we will be reviewing those comments and considering this document for action.

As a reminder to the group, the objectives of this document was to identify issues that were associated with history-based fishing rights' programs and transfer programs, as well as to accommodate ITQ programs with the flexibility for the fishery, as well as the conservation goals of the FMP.

These issues are before the board currently because we have transfer programs in three areas, but we haven't had sufficient progress on these programs, and we need compatible regulations to move these forward, as well as recent effort control programs have put reductions in a couple of the management

areas, and the fishermen are seeking relief from those effort control programs through the ability to transfer traps.

We held eleven hearings in the states of Maine through New York, and we received twelve written comments on the addendum. Five of those comments were from organizations, including NOAA Fisheries, Atlantic Offshore Lobstermen's Association, Long Island Lobstermen's Association and the Western Lobstermen's Association, as well as the Massachusetts Lobstermen's Association.

Under the section for qualifications, a new concept came through from the comments that instead of the permits holding the history, that traps should hold the history and also be classified individually as a state trap, a federal trap or a dual, meaning state and federal trap.

Under trap migration, there was support to allow a transfer to occur between any two fishermen within the same LCMA. This was not an option in the addendum. The commenters thought that if the trap stayed within that single area, that it shouldn't make a difference in terms of changing the stock assessment or effort within a biological stock unit.

This means that you would not limit transfers between state to state or federal to federal. You would be able to transfer traps with anybody within the same LCMA as you. One of the points that the commenters made was it was unclear if the dual permit holder could buy and sell traps to either a state-only license holder or a federal-only permit holder. It should be clarified in this document if you can buy and sell for the duals.

Under the most restrictive rule, the majority of the commenters supported the commission's application of the most restrictive rule. There were a few that supported the NOAA Fisheries current application. There was one commenter who thought we should delay action on this issue in order for the commission to fully evaluate the impacts of applying the commission or the NOAA most restrictive rule in terms of the number of traps that may or may not go into the fishery if either one of these rules were put in place.

For the data base, commenters said it was very key for this data base to be established and have funding in order to move transferability forward. There was a mixture of support within industry for who should pay for the cost of the data base. For those that supported industry funding, the majority supported a trap tax for those LCMAs that were applying transferability in their plan.

There were a few who supported an industry-wide trap tax. One of the questions that came up in public comment was how could we ensure that the trap tax funding came directly back to actually pay for the data base; would we be able to move that money straight back to the state to pay for the data base?

Under the conservation tax, the majority agreed that 10 percent is the appropriate minimum number for a conservation tax for both full and partial sales. There was an idea put forward that they should have sunset clause for either when a minimum number of traps had been reached or if the stock reaches good health, not overfishing and not overfished, that the tax should no longer be applied. There was a commenter who thought that there should be an exemption for passing traps within the family and not have a transfer tax.

Looking at multi-area trap history, there was some support to retain all or part of your history with the traps. If you remember correctly, if someone is going to transfer a trap that has the ability to fish in Area 2, 3 and 4, the buyer of that trap had to decide what area that trap would fish, and it would be one single area and then that trap would then lose the rest of the areas.

The industry supported having it retain all or part of it to allow more flexibility when buying and selling traps, that it's possible maybe you wouldn't carry over all of its history and maybe just let it carry over two areas to allow for that flexibility. With the reduction of the multi-area traps, if you remember, the addendum states that if you are a multi-area permitted individual that transfers traps, then all of your areas would be reduced by the same number of traps that you transfer.

There was a mixture of support for this issue. Those that were in favor of it liked it because it removed any proliferation. Those that were against it felt like it was a double tax since we already have the conservation tax. Then there was an individual who thought that they should be exempted when passing traps within family members.

For effects on LCMA 1, there was a clear majority support for Option C, which allows you to not be able to fish in Area 1 once you make transfers. There was a comment that we should clarify if this going to affect those individuals who are currently exclusively or primarily fishing in Area 1 if they took part in a transfer, either buying or selling, would they be denied access to Area 1 as well or are we just trying

to deny access to those that are not currently fishing in Area 1.

Some other comments that we had not pertaining specifically to one of the issues is that states should implement complimentary regulations, as well as that we should grandfather any of the transfers that occurred prior to the adoption of the addendum. Next, Bob Baines is going to go through and go over the advisory panel's comments on the addendum.

MR. ROBERT BAINES: Good morning. The advisory panel met on March 27<sup>th</sup> and it was very well attended. There were quite a few guys there. Basically, the advisory panel discussed Addendum XII. That was the crux of our meeting. A little later on I'll talk about one other thing that we wanted to bring to your attention, but I'll go over our comments on Addendum XII right now.

Section 4.2, the most restrictive rule, the AP supports Option A, status quo of the ASMFC Addendum IV definition of the most restrictive rule. This definition of the most restrictive reflects the fisherman's history and will encourage more transfers. Even if more traps are fished initially, the benefits of more transfers in the long term will decrease traps.

It is important to determine if implementing status quo will increase the number of traps fished. The AP recommends that the board wait to vote on this issue without holding up the rest of the document and have a subcommittee further analyze the most restrictive definition to determine if fishable traps would increase.

Section 4.3.1, interjurisdictional data base, the AP supports the establishment of interjurisdictional data base. The AP suggests that federal/state funding should pay for the setup of the data base. The data base should be established with the flexibility to make changes in the future.

Industry should be responsible for funding a portion of the maintenance of the data base through a tax on tags. The majority of the AP suggests only those with an allocation in an area with a trap transfer program should pay a tax while a few suggested all fishermen should pay a tax because they have the ability to put a transfer program in place.

Section 4.3.2 and 4.3.3, the conservation tax, the AP supports a conservation tax of at least 10 percent. The tax should be LCMA specific. They would also support a provision that would end the conservation

tax when no more latent traps were fished or if the status of the stock has improved.

Section 4.3.3.3, transfer trap migration, some members of the AP do not support restricting traps transfers by historical access, which is trap allocations that are restricted with access to state or federal waters only would not be transferred in any way converted to allow migration between jurisdictions.

They felt individuals should be able to transfer traps within the same LCMA regardless of jurisdiction, meaning an Area 2 trap could be transferred anywhere within Area 2 state or federal waters. This provides more flexibility to those states with few fishermen that fish in the same area. For example, Connecticut only has four Area 2 fishermen. By providing more flexibility, more transfers will be made, thus removing more traps from the water through transfer tax.

Section 4.3.4.1, trap history, the AP does not support that the recipient of a multi-LCMA trap. For example, a trap that the original owner could fish in LCMA 2, 3 or 4 must choose one area to fish in and the trap loses its other history. Instead the AP recommends that the recipient of a multi-LCMA trap must choose one area to fish in, but the trap will keep its area history up to two or three areas. This allows more flexibility for the fishery and maintains the current practices of the fishery.

Section 4.4; the effect of permit and trap allocation transferability on LCMAs without history-based allocations, currently LCMA 1: The AP recommends Option C, the permit holder would no longer be authorized to elect to fish traps in LCMA 1 once any LCMA transfer has been made. The AP also recommends that this regulation sunset once LCMA 1 implements a limited entry program.

That's all of our comments on this addendum. I might add this is probably one of the most complicated addendums I've seen. As you're discussing it, if I can clarify any of these comments, I'd be more than happy to. Thank you.

CHAIRMAN CULHANE: Okay, Board, we have this on the agenda as a final action item. It's ready for the board now to go through it. Bill, you had your hand up.

MR. WILLIAM A. ADLER: Yes, thank you, Mr. Chairman. Bob, on this last thing you just talked about, once implements a limited entry program; do you mean a limited entry license program or a limited

history trap thing like the other areas; which do you mean by that?

MR. BAINES: Well, the AP didn't discuss that specifically. At the LCMT meeting, which I did attend – this might give it a little bit of background – the LCMT Area 1 discussed a method to prohibit more federal permits to be transferred into Area 1. That's what the crux of the problem is in Area 1.

Fishermen are buying permits from outside Area 1; and when they're renewed, they turn them into Area 1. I guess specifically to your question, it's the permits – to prohibit the permits that weren't originally Area 1 – and I think in the state of Maine we used to have around 800, and now we have around 1,200. More federal permits are coming into Area 1, and we see this – and I'm not speaking on behalf of the AP now; it's more Area 1 LCMT – we see that as a significant problem.

MR. ADLER: Okay, so when you say limited entry, you're talking about the permits; you're not talking about a trap transfer program?

MR. BAINES: That's right.

MR. HARRY MEARS: Thank you, Mr. Chairman. I have a question for Bob on the comments for Section 4.4; again, on the effect of permit and trap allocation transferability for those that hold a dual area currently on their permits. We have a number of federal permits that fish in Area 1 and also have at the same time qualified for an Area 3 allocation.

Now, a strict reading of this recommendation, as well as what's in the addendum, would likely result in – if that particular federal permit holder were to sell or transfer some of their Area 3 permits, they would no longer be able to fish in Area 1. Was that situation discussed at all within the context of the discussions of the advisory panel?

MR. BAINES: That situation, Harry, specifically was not, but I do believe that it was understood that under this recommendation you lose that ability.

MR. DAN MCKIERNAN: I'd like to make a recommendation to set the tone for this discussion. I agree that this is a highly complicated addendum. The reason it's so complicated is obvious. You have multiple jurisdictions and multiple stock units and multiple LCMAs and multiple LCMTs, each with their own ideas.

But I think what's critical today is to hear the board – we have the board reflect on the comments that we heard at the public hearing, have the board make some recommendations about what they'd like to see come out of this on some of the controversial issues, and then I would recommend that the board then task that subcommittee that was established and has deliberated on this issue over three or four meetings take the recommendations of the board and then craft a final document.

The reason for that is there are so many scenarios that a document like this tries to cover, and it's only through careful analysis of folks who administer these trap tags or trap allocations or licenses, it's only through a careful analysis by them where we can really fully paint these scenarios and understand the outcomes of these decisions.

I think if the board were to take this on as a task in the next hour to talk about these controversial issues and come to some closure, then we would come back in August with a truly final document for final approval. There are decisions that we can make today that can certainly set in motion some of the important issues such as the data base.

MR. PATRICK AUGUSTINE: Thank you, Mr. Chairman. I noticed that the LEC hasn't weighed in yet. Will they be giving a report before get into any discussion beyond this?

CHAIRMAN CULHANE: That was a placeholder on the agenda, but I don't believe –

MR. JOSEPH FESSENDEN: We have one comment.

CHAIRMAN CULHANE: Joe does have one comment that he'd like to make.

MR. FESSENDEN: I'd just like to go on the record as far as the – it's a very complicated system, but certainly it's probably doable, but I think law enforcement should be a part of the subcommittee developing the traceability of these tags. I think it's pretty important to have us involved with that.

The other thing is certainly any transfer of allocation should be done prior to the season, and there should be no transfers allowed during the season. I think that's important. People probably assume that already, but up front I think it's important to have this done prior to the season. That's what we do with – the National Marine Fisheries Service pretty much

does all those changes prior to the new season. Thank you.

CHAIRMAN CULHANE: Pat, did you have a comment?

MR. PATTEN D. WHITE: I guess I had a question, and it might be related to what Dan's proposal is. I was very concerned, in reading through the regional administrator's public comment, as to we're in kind of a chicken-and-an-egg scenario here.

If we don't have the logistics for implementing this kind of thing and we come forward and propose a rule that we can implement, should we be talking about having the mechanism for implementing this rule before we have a rule? I just would like that part of the discussion because I don't understand how it would work. If I'm not clear, there is no way of monitoring the transfer of tags in between areas and all that kind of thing. I'm being corrected.

CHAIRMAN CULHANE: George, maybe you could help us.

MR. GEORGE D. LAPOINTE: I think what Toni was saying was that the data base would be critical for that to happen, and that was the discussion we had the last time about how you get the data base up and running and pay for its care and feeding.

MR. P. WHITE: Right.

MR. LAPOINTE: And I think Pat Kurkul's comment was that if you don't have that up and running, it's not going to be an effective system.

MR. MCKIERNAN: Okay, I think is a good time for us to engage in the issues of the data base, so let's have that discussion. My agency has some programmers dealing in SAFIS and other statistics, and we convened an informal meeting with the National Marine Fisheries Service and some of their data base experts.

It was a useful meeting because we as fishery managers or administrators aren't always so informed about some of the technical details and the aspects of these data bases. My guys and their guys both came to a pretty quick conclusion that this is very doable. It's doable because all the data elements that we're talking about here are already part of SAFIS managed by the ACCSP.

SAFIS right now is the program that tracks the transactions and landings by all permit holders, state and federal, and all of the information that we're



trying to put into the system is already there. There is vessel, there is federal permit number, there is state permit number, and so that is big part of the task that's sort of already accomplished. I don't mean to minimize that this will be a substantial undertaking and will need some maintenance over time.

The programmers looked at this and this is very doable. That's my comment on this. I think that we absolutely need support from ASMFC, ACCSP and to make this a SAFIS application. Our programmers thought that would work.

MR. DOUGLAS GROUT: I think I'll pass right now because my comments were going to be related to what Harry had said; and so to keep the discussion focused on the data base right now, I'll pass as long as I can reserve the right to speak up later.

MR. MEARS: I would like to just support the comments just made by Dan and also by Pat that the establishment of a centralized data base, while doable, is a monumental issue in terms of whether or not we can expect this program to take off the way it should from a federal perspective and remain running into the future.

It's obviously one of the elephants on the table to make sure that we address. It would seem, in thinking ahead, if we were to further reflect on what would need to happen in terms of funding, in terms of commitments, in terms of program priorities from a state perspective, from the National Marine Fisheries Service perspective, from an ASMFC or ACCSP, that is very crucial I believe at this meeting to come some consensus on how we deal with that, possibly to come back at the August board meeting, as Dan I believe is implying, that result in a very definable, understandable type of approach where this centralized data base could continue into the future. So, again, I would hope we move in that direction and I would hope that this board give support for making that happen. Thank you.

MR. MARK GIBSON: Thank you, Mr. Chairman. First on Dan's point on SAFIS, I agree entirely. SAFIS is a very powerful system; and for those states that have invested in it and begun to use it, it's very valuable. We're using it in Rhode Island to interrogate the recent performance of fishing licenses for purposes of renewal and how many licenses we offer.

We're managing the aggregate landings programs with it. We're setting the groundwork for sector allocation type management. So, it's extraordinarily

powerful and useful once you invest some time, and I think a SAFIS application is the way to go with monitoring the trap tag program.

I also agree with Dan that we probably should postpone until August for final action here and have this working group thrash some more of these issues that are continuing to bubble up. The ones that are most important to me are the notion of effort inflation.

These options need to be thought through a little more thoroughly and give this board advice as to where effort inflation might occur, where it might not occur and the steps we can take to minimize that. The data base we've already talked about. I think we can task that working group with looking at some of these things and come back in August. Thank you.

MR. LAPOINTE: I want to get back to the data base. Specifically, we've talked about commitments on the part of the commission and ACCSP. There are two aspects to that. People who can do it, and clearly Dan has talked about some of their folks working on it, but the other one is a financial commitment to do it. I don't remember the exact cost; a hundred thousand dollars rattles around in my head.

It's certainly not part of the ASMFC budget this year. If we look at all of our budget priorities, I think we need to look at that pretty carefully. You know, if I think about priorities for this board, we're underfunding our ventless trap survey, very important as well. We need to look at future commitments to funding in the context of everything the board is interested in.

I would like to hear other people's views about we're going to pull that off if, in fact, that's what we're talking about. I recall at the last meeting there was a discussion about a trap tag fee increase, which the commissioner from Maine didn't like, but we have to discuss where that funding is going to come from at some point. All the work of the subcommittee will be moot if we can't do that.

MS. KERNS: I just want to remind the board that I am in the process of applying for funding from ACCSP to help with the initial startup in the building of the data base.

MR. LAPOINTE: And what is the timeline on that, Toni?

MS. KERNS: The proposal are due mid-June.

MR. LAPOINTE: And then they will be approved when?

MS. KERNS: At the annual meeting.

MR. LAPOINTE: And if might follow up, and then if you are successful, the awards would be granted when?

MS. KERNS: In 2009.

CHAIRMAN CULHANE: Any other comments? Eric.

MR. ERIC M. SMITH: Thank you. I agree with the tone of where this is going. I would point to a point that George made. I think as I understood the document, the working group did say if your transfers were limited to states in a lobster conservation area, then you wouldn't necessarily need the data base right away.

However, I think it still complicate matters to have different areas going off in different ways and different documentation. I'm happy to hear Toni because I was worried the cycle for ACCSP is right on us for proposals for next year, so I'm happy the staff is getting together with ACCSP and talking that through.

The other point on this – I'm hesitating because I can see a downside to this right away, but I think it's necessary about it. I agree with the concept that we need to get back to the working group and say, among other things, here are the thoughts that the AP had. They're somewhat different from the tone of the direction that the document was taking, so we need to step back a bit and consider those suggestions, those recommendations.

For example, history following traps instead of history following permits is an easy sentence to say and conceptually it turns the whole process on its ear. That has to be thought through. I'm wondering – and here is why I hesitated – I think the working group needs to get together on its own and talk about things like the data base and to consider the AP's views.

However, before the August meeting it might not be a bad idea to have the two groups, then, get together and try and discuss differences. I'm sorry I left law enforcement out, but Joe's point was right on, a representative from the law enforcement committee, too.

In other words, make it a little bit broader working group for that second meeting so that when you all get together again in August as a board – sorry, I'll only drop that on you four or five times this week – when you get together again as board, some of the differences of opinion between different strongly held and legitimate views will have been hashed out in the working group. That may be a point – I mean, Dan started this whole thing going and I think that was useful, but I think that would be a useful part of this somewhere in July or August before the meeting.

MR. MCKIERNAN: I would totally agree with Eric, and the reason is David Spencer participated in our past meetings and he was extremely useful, but he was only one active fisherman and had one perspective, but his perspective was very, very valuable. So to get the perspective of a larger cross-section of the industry and us to convince them of our views and then to convince us of theirs, I think it's a great suggestion.

MR. LAPOINTE: In a light note, Mr. Chairman, I think if the representative from Connecticut mentions retirement and smiles, their fishermen should pay a dollar per tag and they should be found out of compliance.

CHAIRMAN CULHANE: At this point I see David Spencer in the back has his hand up, and there seems to be little lull here so, Dave, why don't you come up to the public mike and we'll take your comments and maybe that will inspire the board.

MR. DAVID SPENCER: Thank you, Mr. Chairman, David Spencer, Area 3 lobsterman. I would support the further discussion of some of these issues. I guess my first question to that regard is the intention is not to come back and go to public hearings again, and I'm assuming that's the case. I guess that puts some constraints on what can be discussed by this group, but that would be my first concern.

I just wanted to pointed out we have areas that have asked for transferability over four years ago. Any delay is problematic, but I do think doing it right the first time is a higher priority. As long as we don't have to go to public hearings again and as long as we can get going at the next board meeting, I would support some further discussion, especially as it relates to a broader industry cross-section being there. I do have some hesitation that one meeting with a broader cross-section would be able to reach a conclusion, but it's certainly worth a try. Thank you.

MR. MCKIERNAN: So, with the objective to try to proceed on some of these issues so that when the committee reconvenes they have some clear guiding from the board, one of the things that I've found in the document is that there was a lot of concern about the boxes you put permit holders in, the state-only box, the dual box and the federal-only box.

If you recall in your documents, the appendix on Page 17 – it's at 6.0 of the document – you'll see that in the final analysis state-only would be able to transfer to state-only, dual to dual, and federal to federal. After listening to the public comments, I think that can be alleviated somewhat and it also can try to address some of the issues that have been brought here about maybe some of these transfers can actually go forward in the absence of the data base.

What I mean by that is, for instance, in Area 2 or Outer Cape we have state-only permit holders, we have dual permit holders, and, of course, we have federal, but it should be possible for the dual permit holders to transfer their trap allocation to a state-only permit holder within that same state.

That gets to the issue of allowing the states to move forward with an in-state transferability program, and it wouldn't compromise NMFS' goals of not proliferating traps or not allowing migration of traps, rather, from the state zone out to the federal zone. So in this case it's just the opposite. It's a state permit holder who happens to have a federal permit can transfer those tags to a state-only permit holder.

I think if those on the board who are concerned and are trying to satisfy their constituents who are looking for the potential to transfer or attain tags, this gives them an avenue that this document didn't necessary capture. In today's discussion I'd like to get buy-in from that so that when we meet as a group, people are comfortable with that. So, again, it somewhat broadens the pool of allowed transfers when a dual permit holder would be allowed to transfer those traps to a state-only, and the recipient would be able to fish only in state waters. Can I get some discussion on that?

CHAIRMAN CULHANE: Ritchie, was that what you wanted to comment on or did you have something else.

MR. G. RITCHIE WHITE: No, I had something else.

CHAIRMAN CULHANE: Harry, to Dan's point?

MR. MEARS: Yes, I'll comment very briefly on that. While I certainly understand Dan's point in principle, that would be very difficult from a federal perspective in the absence of federal regulations or complimentary regulations. At the very least it would compromise the first step that would likely occur after federal rulemaking, which would be qualification setting the stage for transferability. I think what Dan is proposing is taking a jump start in the absence of federal regulations, which I believe probably would not be possible from a federal perspective. Thank you.

MR. GIBSON: My question for Dan was I see who does the accounting on the state end, but who does the accounting at the federal permit holder level? I'm assuming if we have an MOU with the Service, the state would be capable of doing both. Although I anticipated Harry's concerns, but is that what you're thinking, Dan, since we've got MOUs, we do the accounting on each end and make sure they have the right amount of tags the next time around?

MR. MCKIERNAN: Exactly, Mark. Just so the board knows, when Massachusetts has its ITT program running, as we do now, we see all of our permit holders as state entities whether they have landing permits with a federal permit to fish or a coastal permit with a second federal permit aboard, with that third category, of course, the state-only, so we're issuing trap tags to all three components, and we feel that we would have the clean records on which to allow this to go forward. Basically, for Outer Cape and Area 2 that's been the situation we're in right now.

One more comment, all of the allocations; in fact, the plan itself was based on state records as sort of the premier data set if that entity is filling out catch reports under the pains of perjury, which is happening in Massachusetts, so we feel very confident that our allocations are going to prevail because it's a mandatory catch report that NMFS doesn't even necessarily have. This is a critical issue for us because it's an endless – we can't move forward until we get a data base, but yet the plan itself was built with sort of the states' catch reports as the defining criteria.

MR. R. WHITE: Thank you, Mr. Chairman. To kind of clarify the process we're in right now, a suggestion would be that we decide that we're going to take these issues to the committee – and I don't know if that takes a vote where we have final action ahead of us on the agenda. If so, I'll make a motion. And then, secondly, that we go down through of the issues

and maybe we can eliminate some from the – assuming that we are going to go to the committee, which it looks like, and take each issue, eliminate it or bring forward the issues we want discussed.

CHAIRMAN CULHANE: Well, it certainly seems as if there is a consensus that's how we should proceed on this, and I don't know if it's necessarily going to require a motion or just consensus of the board that that's the approach that we should take. I think that's the direction we need to move in.

MR. AUGUSTINE: Thank you, Mr. Chairman. I was concerned about sideboards, also, and I speak to what you were covering, Ritchie. Just listening to the conversation, it seems like we're going to interject over this committee or through this committee some major changes, possibly, and we're going to end up with a different document, and we're going to have to go through another public review; and if that's what we're going to do, then, I'd like to put a stop to it right away.

But the other question where George asked the question about cost and Toni responded by money from ACCSP and the number of a hundred dollars was thrown out, we were sitting here and wondering whether it was a hundred thousand dollars initial cost, what could be the follow-on cost, and would that be budgeted through ASMFC in the future or would that be an ongoing grant from ACCSP. I think it's critical because we could be looking at a whole lot of money over time, so could we get some clarification on that?

CHAIRMAN CULHANE: Let's let Toni speak to that and then I'll go to George.

MS. KERNS: The first time I had a discussion with ACCSP they had given me a rough ballpark of about 80K for initial setup, but there wasn't a lot of thorough examination. I think when Dan and Bob with people from their data shops got together and did a little bit more thorough investigation – and those individuals work with SAFIS on a regular basis – found that there may be more common elements than we originally thought there would be.

I'm not sure if that cost would change or not, as well as the maintenance costs might change because if it would be a part of the SAFIS application, then it would be part of sort of the daily duties of those individuals that work on SAFIS for the states, and so it may be less burdensome than we originally thought it would be.

MR. LAPOINTE: Thank you, Mr. Chairman. I want to follow up on Ritchie's comment. It strikes me if we're going to – well, first, in response to Pat, my understanding is that if this gets sent to the subcommittee it is for clarification only. It's so we can better understand and not changing options because that would require going out to public hearing.

And if we're going to sent it back to the subcommittee, it's logical to ask are there any questions we can take off the table; you know, the qualifications' questions or any of them? My sense from the discussion is the answer to that is no. And if that's the case, unless people have specific examples at this point about how to clarify – and I do not – I'm going to have to go back to my staff, we quickly take the matter and send it to the subcommittee and get done with it. Otherwise, we're going to spin our wheels this morning.

Unless there are comments that can bring clarity to individual options, I think we should charge the subcommittee, have our states go back and say if there are examples in the document that they think shouldn't be there or examples that aren't there that should be that help clarify, that that would be the charge to the states so that the subcommittee can proceed with its work.

MR. MCKIERNAN: In the interest time – and I appreciate George's comments – I do have some issues that I'd like the board to hear and to discuss. The first is in 4.1.4 I want to expand the objectives to prevent migration of traps between states as well as between state and federal waters.

The discussions we had in the committee were clear the National Marine Fisheries Service did not want to see state-only traps winding up in the federal zone given their concerns about marine mammals offshore and other issues. I have a similar concern that I wouldn't want to see my state fishery see an influx of traps from another state fishery.

I think one of the objectives ought to be that each state should also work to minimize translocation of effort into a state. I have other protected species issues such as turtles or whatever. I don't want to see, for instance, Rhode Island's fishery wind up migrating into Massachusetts for whatever reason. That's a principle I would like to get into this document.

MR. LAPOINTE: Mr. Chairman, if I might, is that an addition or a clarification, again going back to the question –

MR. MCKIERNAN: I call that an addition because the closer I looked at the document, the more I realized that there was language in the document that was actually allowing dual permit holders from two states to transfer to one another, and I have a problem with that.

MR. GROUT: Well, again, this may be an inappropriate time because I wanted to talk about issues, and one of the questions I had for Harry about his initial comments on Section 4.4 and the concern that there are existing lobstermen that do have an allocation in Area 3; my question for you on that – these are existing people that are fishing in Area 1 that have an allocation in Area 3. Do you have an idea, from looking at the data base, number one, how many people are actually checking off that they have – on your permit checking off that they're going to fish in Area 3? And, two, how many actually Area 1 lobstermen actually have an allocation in Area 3? Is this a large or small or –

MR. MEARS: Doug, based upon the last time we looked at our data base, about 17 federal permit holders that routinely fish in Area 1 that also have a viable Area 3 trap allocation. I don't have the breakdown between, for example, Maine and New Hampshire, but it's about 17 that would fall into that universe that have both areas.

MR. GROUT: And are any of them actively fishing and getting tags fishing in that Area 3?

MR. MEARS: Yes, six out of Maine and ten out of New Hampshire.

MR. MCKIERNAN: Just to clarify it for Doug, what you're describing here – and for the board – is a situation where someone is fishing Area 1, not opting for Area 3 because they don't want to deal with the larger gauge, but that allocation is sitting in the filing cabinet at NMFS, but the state agency that's administering trap tags isn't issuing them Area 3 trap tags. You would consider them an Area 1 lobster fisherman, but yet the allocation is there and would be transferable should these rules go forward. It would be quite a windfall.

MR. GROUT: Well, I misunderstood, then, what Harry was saying. I heard that ten and six were actively fishing in Area 3.

MR. MEARS: That is correct, Doug, yes.

MR. ADLER: Thank you, Mr. Chairman. Harry, under the current NMFS' interpretation of most restricted, Area 1 fishermen have 800 traps. If these people have an Area 3 allocation and it's not 800 traps, then they're going by you can only fish the most restrictive number no matter where you fish; isn't that the way this is?

An example is an Area 1 fisherman has an 800 trap cap; okay, fine. Let's say he has a 400 trap allocation out of Area 3, then technically he's only supposed to be fishing 400 traps no matter where he fishes; correct?

MR. MEARS: That's correct, understanding he can change his business decision year to year under current regulations. But what you're saying is correct for the fishing year he makes the election in which area to fish.

MR. ADLER: And you're saying that 16 of these fishermen are using Area 3 allocations and they are or they're not fishing in Area 1, too?

MR. MEARS: I'd have to further look into that to get the specifics, Bill.

MR. LAPOINTE: I want to get back to Dan's comment on Page 9, 4.1.4 and suggest, I would call it a clarification, to prevent migration of traps between state and federal waters and between states, adding that language before they go to the subcommittee just so that in fact it takes that into account.

CHAIRMAN CULHANE: Okay, Toni has something she wants to add to it.

MS. KERNS: Just for clarification, if there is not going to be a motions, then it is the intention of the board to ask the subcommittee to write language to clarify that there would be no migration from federal waters to state waters, as well as among states? If on each of the issues either we could do a motion or just let me make sure that I'm clear on what you'd like the committee do, that would be very helpful for the committee.

MR. LAPOINTE: Should we go to motions, Mr. Chairman, it's your call.

CHAIRMAN CULHANE: Well, I think if Toni is comfortable with keeping track of the issues that we're talking about and we refer that to the

subcommittee, I think it's fine to proceed that way. We have your comments recorded here.

MR. SMITH: As a lark I took on what Dan suggested that we do and tried to go through here and identify things that I would recommend to the group that we either nod and say yes that's an idea we want to have in here so that the working group and the advisory panel gets a sense of where the board is coming from. It doesn't mean we can't change our mind later if we hear a good argument to the contrary, but sort of a signal, if you will.

I would like to just quickly run down, based on the document, starting on Page 8, just kind of a strawman approach and see if people really disagree or not. At the top of Page 8, Section 3.1, I would leave that all in there as one of the foundations of the plan. There are two ways of dealing 3.2. I personally like having that in there. It also gets dealt with later on in the document in a different way, but I would leave it in there, understanding that it's a little inconsistent with some of the things the AP said, but it has been a foundation here.

CHAIRMAN CULHANE: Just one minute, George is trying to interrupt you here.

MR. LAPOINTE: I didn't know how you wanted to proceed. On 3.1 you say leave it in; does it require clarification; does the subcommittee need to work on it more or can we just leave it alone?

MR. SMITH: I had no problem with the way that one was written, so I'd leave that open for other people to want to adjust.

CHAIRMAN CULHANE: Okay, so 3.1, unless there is any other objection, we'll let it go the way it is.

MR. SMITH: And, again, clearly, not that it's a final decision. It would simply, as Dan said, give the working group some idea of where the board is leaning, if you will. Okay, so 3.2 I would also leave in. I recognize it's not uniformly agreed upon, but as a foundation I think that's where the board was coming from.

Then 4.1, I think that's one that has to be deferred to the working group and the AP because that was one of their fundamental comments, whether history follows the trap tag or it follows the permit. I think we're going to find that it's too complicated for the history to follow the trap, but we ought to hash that out, and the way to do that is between the AP and the working group. All right, the next one, I saw a fairly

strong signal from the AP that they liked status quo; in other words, the commission's approach to the most restrictive rule.

That's something that we've already adopted, and it was very hard to figure out for me how it actually worked, but once I did I could see the value of it. I would suggest that 4.2.1, which is status quo – I mean, it doesn't forestall anything else, but that's kind of a preferred option, if you will.

4.3.2, which is the tax, I would put that whole section in there – let me take it sequentially – 4.3.1, I think that has to go to the working group. That's needs more development, the data base. 4.3.2 is the tax, and there is only one sub-section, so I would say you just leave that in there as it is. Well, I'm sorry, there are two parts, and they're both, I think, worthwhile, either partial trap or complete business, so I would leave that in there as guidance for the working group.

I would 4.3.3 to the working group again because that gets into some of the complications that Dan and others have been talking about, which is how do you deal with multi-areas and the data base need and so forth, so that needs further development. 4.3.4, I would simply leave that in there. It's an either/or or one or the other type of approach.

And I got to 4.4, and it's almost at the end of the document, that one is a policy call. We shouldn't be sending that one to anybody. We're going to have to decide whether we think that nobody should be able to go fish in the EEZ in the Gulf of Maine if a transfer in some other area has occurred; and then if we want to then pull that back, if Area 1 goes to limited access. I mean, just think of the policy implications of making that choice. We probably won't decide it today, but that's the kind of thing that this board has to wrestle to the ground. Thank you.

CHAIRMAN CULHANE: Thank you, Eric, it's times like this that I think we're going to miss you.

MR. MCKIERNAN: Just to back Eric up a little bit, under 4.3.2.2, complete lobster fishing businesses, one of the things I'd like the board to discuss or consider is the fact that later in this document it says that states can allow transfers between its state-only permit holders. We do have people who sell their permits in their entirety and their allocation. When that happens, we extract 10 percent of the trap allocation.

This particular paragraph is misstated if it's referring to what is going on in the state fisheries now where it

say transfers of whole lobster businesses continuously occur, as they do presently, without a conversation tax; that's not true. In Area 2 and Outer Cape we're taxing those businesses when they're transferred in their entirety, so this is a flaw in the document that I should have caught earlier. I just want the board to sort of send a signal to the subcommittee that is something that we should reconcile.

MR. SMITH: Actually, it's not a flaw; it's a partial truth. That is true for Area 2 and Outer Cape. It is not true for some of the other area, and that's one of the reasons for this addendum is to try and standardize the rules. That does beg for some clarification. We have transferable licenses and the whole allocation goes with it. There is no tax on it in Area 6 because the plan doesn't require a tax on transfers. It is different from Area 2. In time hopefully we will get all our rules more similar.

CHAIRMAN CULHANE: So, just to make sure there is agreement on this, we're not talking about taking this out at this point. We're just going to refer that to the working group as a point to be clarified. George.

MR. LAPOINTE: And I think part of the clarification should be that this commission operates under the premise that if a state wants to be more restrictive, they can. So if Massachusetts has a conservation tax and the plan doesn't require it, that's fine with us. I mean, I don't want to lose that principle as this goes forward.

MR. R. WHITE: Thank you, Mr. Chairman. Under 4.3.1 I just wanted to make sure that it was clear that the working group is going to come back to us with a recommendation on the cost issue; you know, the long-term solution to where the money is going to come from to run this program beyond the initial startup money that we may get from ACCSP.

MR. ADLER: Thank you, Mr. Chairman. If I may ask Eric a question; when you went to 4.4.1.2.3, whatever, the ones that have Options A, B and C, you said that was a policy decision. I was just wondering if under those options there, shouldn't the subcommittee be looking at – for instance, Option C, let's say, 4.4.3, the National Marine Fisheries Service I thought had some good points on that.

It was what we talked about earlier Harry about the Area 1/Area 3 thing, what do we do with that? Is that something that the subcommittee should be looking

and discuss anything in that section rather than just leaving it to us, Eric?

MR. SMITH: If they could add some clarity so that my successors could sit here and be able to make a better decision in August; that would be fine. I would leave it on their agenda. I just pointed out that ultimately we have to decide the policy of that; and if we get some guidance or assistance because some other guy has had a chance to think through it a little bit more, that's fine.

MR. LAPOINTE: I wanted to follow up on Ritchie's comment a little bit. If the subcommittee is looking at cost, it strikes me that we're flying this plane on a wing and a prayer with regard to cost. This may require another addendum. We might want the subcommittee to look at cost alternatives for funding this.

One of the things I think about is for these affected areas – we have talked about a trap tag fee increase, you know, to have the industry members who benefit from the transfers pay for it. It might be fifty cents a tag; it might be a dollar a tag; I don't know that, but I think that's something the subcommittee or we need to explore in time to make sure if you start a data base there is going to be funding there for the long term.

MR. MCKIERNAN: I just want to connect two comments, if I could here, just so the board understands my dilemma. George said that if the Commonwealth or any state wants to have a restrictive program that's more restrictive, they can do that. I appreciate that. Harry is saying don't allow any transfers that involves any dual permit holder.

Well, if you look at two of the three groups that Massachusetts is permitting, the state-only permit holders and dual permit holders, which have the same permits in our system, the coastal lobster permit holder, and we have issued trap allocations to those folks. What we're saying is we should allow those folks to transfer, especially if it's the dual permit holders that want to hand the traps over to a state-only guy. That should have no impact on what NMFS is going to do in the future. There is my dilemma that I'm trying to get clarity and I'm trying to make some traction on the state waters portion of this fishery. I need to be able to move forward and do that.

MR. LAPOINTE: I'm right and Harry is wrong. I mean, again, as a principle for this commission, that

may cause some problems with interpretation, but the idea that you want to be more restrictive I agree with entirely. If other board members disagree, we should make that known, but it strikes me that is, again, one of the foundational principles upon which we operate.

MR. MCKIERNAN: And the reason it works now is under the MOU – maybe this wasn't what the MOU was designed for, but under the MOU our rules can trump whatever the federal allocations are. We can tell a fisherman yes – in fact, we do it now. There is Outer Cape, there is Area 2, both of those areas, when one looks at their federal permit and sees an 800-trap allocation, and in many instances we don't allow those permit holders any trap tags.

So we're essentially trumping the current federal rules because those are trap caps and not allocations. That's been the difficult in the office is trying to manage that with the delayed implementation of this on the federal end, and so I just hope that we can – that the board would allow me to sort of move forward managing the state fishery even if the state fishery includes dual permit holders. Thank you.

MR. MEARS: I would support the comments which were made that a state certainly can and always has been able to do more restrictive regulations. However, we're trying to move forward with a transferability program, trying to close the gap not only between the National Marine Fisheries Service regulations in the states but also amongst the states themselves.

My major concern in this regard is that as individual states might begin transfers with dual permit holders; that is, those that have both a federal permit and a state permit, at some point, once this subcommittee reports back to the board, the board takes a vote, the board recommends to the Secretary to take these recommendations forward to its own public hearing process; that if there are variations, for example, between the way Massachusetts and Rhode Island might qualify individuals and as transfer begin to occur, this is major blockage to I think our collective resolve to try to come up with a program.

Whereas, closely as we can we have state regulations matching up with federal regulations; maybe not seamlessly but certainly complimentary-wise, I just have the major fear that, yes, if the states do more restrictive regulations by virtue of some of these transactions involving dual permit holders; that as we go to our own rulemaking, it will compromise our ability to come up regulations, for example, that do

not discriminate between individuals by state of residence.

That is one of our major concerns as we go forward in federal rulemaking. We tried to make a point of this in our written comments April 2007 and April 2008. That is my major concern in this regard, that it's on the way to a possible train wreck in terms of ever hoping to come up to a common program where state and federal initial qualifications and ultimate transactions with transferability would mimic each other.

I would hope that can remain our goal, but the fear I have now is that if, in fact, we do move forward with state jurisdictions allowing or implement transfers between state and federal permit holders, which I acknowledge they can do, a state has the right to do that. It just compromises the ultimate goal to have a seamless area-wide transferability program. Thank you.

CHAIRMAN CULHANE: And I think one of the things we should make sure of, then, is that, Harry, your comments are before the working group when they consider these changes. Bill.

MR. ADLER: Thank you, Mr. Chairman. I just want a clarification on dual permit holder. We're talking about a state license and a federal license, but for the same area and not dual meaning two different fishing areas; is that correct when we say "dual"? Example, Area 2 state permit and still in Area 2 happens to have a federal permit – it's got nothing to do with Area 3 – is that what we mean, in this case, by dual permit holders? I need a clarification to that.

MS. KERNS: Yes, Bill, a dual permit holder is somebody that holds a state permit as well as a federal permit. It is identified in the document on Page –

MR. ADLER: But it's within the same area; right?

MR. MCKIERNAN: That's right.

MS. KERNS: Yes, it's on Page 6.

MR. AUGUSTINE: Thank you, Mr. Chairman. It appears that we're going over old ground that's been plowed already. It appears we've beat it to death, so if you need a motion to move on and remand this back to the working group –

CHAIRMAN CULHANE: Pat, we don't need a motion at this point, and I really don't feel as if we're



beating anything to death at this point. I think this is something that we need to do to come up with the recommendations. Eric has given us some good recommendations, Dan had some recommendations.

We might be coming to the end, but we're going to go through it. Then Toni is going to summarize just to make sure she has captured everything that people have brought up that we're going to refer to the working group. Then by consensus we could just send this to the working group and then we're ready to move on. Thank you for your concern.

MR. BAINES: The board has said that they want to expand the working group, and I want a little clarification. Are you talking about having representatives from the advisory panel participate in this now; and if so, one from every state? What are your thoughts on that?

CHAIRMAN CULHANE: Eric, do you have a suggestion?

MR. SMITH: When I mentioned that earlier, my thought was that there are some things the working group has to work out themselves, which is the database type of thing. The other things where the AP recommended something that is quite a bit different than was in the document, then it needs to be representative. It doesn't have to be two full memberships. I mean, in one of these groups the worse thing you could do is put 25 people in a room who all are fired up and you won't get anything done.

I think in that respect you might take some representatives of the working group and some representatives of the AP to make six or eight or ten people that can actually have some good communication with one another for a day on those common things.

CHAIRMAN CULHANE: And Toni has been whispering in my ear about a subset of the AP. I don't think it's necessary to have all of the AP, and I don't think it would be fair to Bob to say you go by yourself. I think Toni can work with the AP to get a small number of people that are interested in this issue and could be valuable to us. I see David Simpson in the back has his hand up.

MR. DAVID G. SIMPSON: Listening to some of the comments and concerns in terms of where allocations even within an area can go; in other words, there have been some issues or concerns about an Area 2 state water allocation moving to federal waters, a different jurisdiction, and I heard earlier a

concern about a Rhode Island Area 2 allocation moving to Massachusetts, it seems that on Page 8, Section 4.1, the categories for allocations need to be taken one step further, and that would be to identify traps as belonging to a particular state or federal waters area and an overall LCMA.

Then the rules for which can move where would flow from that, so it's something for the subcommittee to keep in mind, because it sounds like there is this desire to maintain control over your own waters by jurisdiction for various reasons, whether it's marine mammal protection or other concerns related to effort. It's just one more thing for the subcommittee to think about.

CHAIRMAN CULHANE: Okay, at this point I'm going to have Toni go through the various things that have been identified; and then if anybody has anything else to add to it, otherwise we can wrap this thing up and move on to the next thing. Thank you.

MS. KERNS: Thank you, Mr. Chairman. What I have are areas where we're going to look into clarification from the subcommittee. Under Section 4.1, having the working group look at whether or not the traps should retain the history or should the permit retain the history; then identifying where that trap is; a state versus federal waters and what state it actually belongs to; as well as what LCMA that trap belongs to.

Also, under that section is putting clarity in whether a trap can migrate from state to state as well as migration from federal waters to state waters. Under Section 4.2, Option A, having the commission's regulation on the most restrictive be the preferred option. I think it might be useful for the group to add clarity, if it's possible to identify the impacts of that being the preferred option, meaning looking into whether or not traps could be reduced or increased if the National Marine Fisheries Service were to adopt this commission rule.

Under Section 4.3.1, the data base, having the working group give a recommendation on an actual cost of startup as well as maintenance and providing cost alternatives for maintaining the data base and specifics such as how much would it cost per tag under different scenarios of industry participating in that funding through a tax on tags. We have all of Section 4.3.3 to go back to the working group. Part of that is the transfer tax continuing on full business sales.

MR. SMITH: Could I clarify 4.3.2 is the taxes.

MS. KERNS: Thank you, Eric. 4.3.2 is clarifying the conservation tax and whether it should occur on full business sales if the current plan already requires it for a particular LCMA as in Area 2, which Addendum IX requires that conservation tax already. Then we just had to take the rest of Section 4.3.3 back to the working group. There wasn't any specific tasks to it, but I'm mentioning it for the working group just to make a recommendation to the board if there needs to be any changes to those sections.

Under Section 4.3.4, this section is okay. As staff it probably would be useful for the working group to give you guys' guidance on specific dates for when documentation must be submitted that would work for all states to allow transfers to occur, so that it occurs at the same time. Lastly, under Section 4.4, while this is a policy decision, that the working group should come back for clarity for those that are actively fishing versus not fishing Area 1. Those are all of the points that I have.

CHAIRMAN CULHANE: Okay, with that, I hope that's captured everything that we're all looking for here. If anybody has anything to add to that, speak now or forever hold your peace. We will take these recommendations and refer them to the working group. Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. Eric had also mentioned – and I don't think it's a big deal – 3.1, 3.2 stays in, whatever those – the very beginning, so that just sort of stays in for discussion?

CHAIRMAN CULHANE: Yes, that it stays in; it wasn't anything that we really need to go over. I do have a hand in back now. Since this does not involve a motion here and it's something that we're continuing over to the August meeting, we really don't need many more comments on this, but I see John Davie has been waving at me from the back.

MR. JOHN DAVIE: My name is John Davie for the record. I'm a commercial fisherman out of Long Island representing the Long Island Sound Lobstermen's Association. I just want to make a comment that the Lobster Conservation Management Teams were set up to recognize the needs of the fishermen.

I understand what you're trying to do; you want to make sure that on the federal level and the state level there is nothing compromised or a conflict. I understand that, but the Lobster Conservation Management Teams were set up; and if we don't use

them to help the fishermen make a decision on how they're going to go with trap transferability, which they're going to be affected the most, it undermines the system. Why do we set them up?

Gentlemen, we stand the most to lose here in our situation. I'd appreciate if you'd take under your wing the Lobster Conservation – I know you're going to put somebody on the board maybe representing from the advisory panel or whatever you're going to take other people in, but this is important to us, especially in New York. We have a diverse situation.

I see Massachusetts is doing a good job of trying to make sure their interests and needs are taken of. I'd appreciate it if you could allow us to go through the Lobster Conservation Management Team, let us put something together, and we'll try and meet all of the demands that the feds want over here, and we'll do what we can. So, please, this is important to us. We will come back in an adequate amount of time from New York with some kind of answers.

I don't believe going across the board with the same rules for every state is going to apply to everybody. Everybody is diverse. Some are licensed individuals, some have corporations. I know Eric Smith over there, he's going to be leaving in July, and I can't say I'm sorry to see him go because many times we never saw eye to eye.

CHAIRMAN CULHANE: With that said, John.

MR. DAVIE: I don't need to say anymore. Thank you.

MR. SPENCER: Thank you, Mr. Chairman. I just have a suggestion and it relates to 4.3.1, which is the data base issue. If I'm understanding this correctly, the board is going to task the subcommittee to come up with some cost analysis. I would recommend that I think that's beneficial, but I would like to see the board task that group as being responsible for the formation of this data base; so not only come back with a cost for it, but what it will look like; and also a deadline.

Obviously, this is a show stopper. If we don't have a data base, we won't have transferability. We've had the same discussion at several board meetings. Without sort of a date certain or a deadline to come back, I think we may continue to have this discussion. I would ask that be part of the charge to the subcommittee as well. Thank you.

CHAIRMAN CULHANE: Okay, I think we've been through all of this. Do we have consensus that this is what we're going to go back to the working group with? Toni will work on getting advisors and law enforcement involved in the group as well, and then it will come back to the board for the August meeting. Everybody is shaking their head. Any other comments on this issue?

Okay, then I think we're ready to put this one to rest until we come back in August. We'll be ready to move on to the next issue in just a minute although there was one other issue. George brought to my attention that we have two new commissioners joining us today and I failed to introduce them. We have State Senator Susan Sosnowski from Rhode Island and we have Tom O'Connell, the new commissioner from Maryland. I'd like you all to welcome them to the board. (Applause) Okay, at this point we need to consider Draft Addendum XIII.

### **DRAFT ADDENDUM XIII**

MS. KERNS: Thank you, Mr. Chairman. Draft Addendum XIII went out for public comment at the same time as Addendum XII did. Today we are going to review that comment and consider this document for final action. To refresh your memory, the purpose of Addendum XIII was to codify the Outer Cape Cod Effort Control Plan as it was established by the Commonwealth of Massachusetts. It also drops the ASMFC plan goal to do a 20 percent trap reduction after the change in the stock status from the most recent stock assessment. The Outer Cape Cod area had reduced the traps by 10 percent already as part of that 20 percent goal.

One hearing was held in the Commonwealth, and it was very well attended. I believe it was 40 attendees. There were eight written comments, and one of those was from one organization, the Massachusetts Lobstermen's Association. There was universal support for all the options of the addendum in the public comment as well as the written comments and the hearing comments. That is all I have on this document. If there are any question, I'll take them.

MR. MCKIERNAN: I would like to make a motion to adopt Addendum XIII as an addendum that would replace Addendum III, Section 2.1.7.2, trap reduction schedule; and 2.1.7.3, annual trends for period and passive reductions. That's my motion.

CHAIRMAN CULHANE: We have a motion; do we have a second? Okay, seconded by Eric Smith. Discussion on the motion? Eric, go ahead.

MR. SMITH: Dan, I'm skimming through this again and could you remind me that the principal change here is really simply the appeal of the 20 percent? I mean, there is an awful lot in Section 4 of the management measures. If there are substantive other changes, could you just highlight them very quickly?

MR. MCKIERNAN: Yes, Eric, that is the only change. When we introduced the conservation equivalency in 2003, we replaced this section of Addendum III with a complete new program that varied in so many details, but what we didn't address was the need or the lack thereof of the 2008 deadline to meet a 20 percent cut.

This particular addendum that you would be voting on is silent on the deadline for the cut of 20 percent. In fact, the cut itself is silent. We don't intend to increase traps in any way for any purpose, but it takes away the targeted goal for trap reduction and the deadline.

MR. SMITH: So, the surrounding text in 4.1.1., 4.1.2 through 4.1.6 is all existing. The changes in 4.1.4 – okay, thank you.

CHAIRMAN CULHANE: Are there any other comments on this? Are we ready to take the motion? Okay, I think we're ready to act on this. All in favor, say aye; any opposed, none; any abstentions, Harry; any null votes, none. Thank you, the motion passes. The next item on the agenda is the Massachusetts Conservation Equivalency Proposal. Okay, I think Dan can introduce this to us, and then we have comment from the TC on it.

### **MASSACHUSETTS CONSERVATION EQUIVALENCY PROPOSAL**

MR. MCKIERNAN: I have a memo from myself to the board, and it's fairly lengthy but it goes over the issues at hand. I just want to let the board know that the essence of this is not an attempt to weaken current enforcement and compliance, but rather to strengthen the conservation benefits relative to the actual standard that we think is going on right now.

By adopting this eighth-inch standard, we think we can apply more rigorous and more defensible law enforcement and improve compliance. The bottom line is that there is really a horrible relationship between Area 1 fishermen and wardens because of the difficulty of the zero tolerance and the inconsistent application of the rule, and it's nobody's fault. It's just inconsistent because there are no standards to a zero-tolerance definition.

Unlike my sister states of New Hampshire and Maine, we can't put a zero-tolerance into our industry relative to the dealers and the consumers because we have three different standards for v-notching in Massachusetts. We have the Outer Cape, which is still at a quarter-inch straight-sided, no setal hairs, which means the lobsters that have molted once and no longer protected. We have the eighth-inch standard in Area 2, which people are very comfortable with, that is now being expanded to the offshore areas. Then we have Area 1 with a zero tolerance.

And recall that the zero tolerance in Area 1 was sort of the second aspect to the old overfishing solution back under Amendment 3, which was an idea that was proposed by mainly the Maine industry, which is v-notch all of your egg-bearing females, protect those females through two molts, and the model suggested that you were going to be very close to your F-10 targets.

So after living with this rule for seven or eight years, it has become increasingly problematic for us, especially as some of these other rules have changed in the background. Specifically what I'm getting is the rules enacted by this board a year ago to put in the eighth-inch definition in some of these other areas. We believe the eighth-inch is very conservative.

The last meeting I submitted a memo and I submitted a technical report that shows that the vast majority of these lobsters are protected through two molts with the eighth-inch definition. One of the issues that I raised in this memo that's being sent around is the issue of how difficult it is to enforce the rule and how difficult it is to bring about successful convictions.

Our law enforcement officers have reported to me that if you have a zero-tolerance violation, if you can find another violation in the same bust, you know, bring it on or pile it onto the charges, but it's very difficult to get sort of the respect of the courts or successful prosecution of something that is so difficult to define.

Now, as far as the TC memo – and I don't know if it's too early to talk about the TC memo, but since I have the mike I'll continue. The TC memo was interesting because I appreciate Carl Wilson's efforts. The Maine sea samplers went out and they did trips in two areas offshore, two trips, I guess, and showed us a number of lobsters that fell into a whole suite of categories relative to their v-notched states.

I'll point out that about 10 percent of the lobsters in the Maine report were considered mutilated. As I understand Maine's classifications, mutilated was a lobster that had suffered a natural injury. This is part of the problem that our fleet is dealing with; that a naturally injured flipper is demanding protection under the full force of the law under this rule. We think that this is what is causing the problems between the fishermen and enforcement.

Furthermore, what is really curious is the information in the table shows that there are lobsters in Maine that apparently are being notched at depths less than an eighth inch. While that's not legal in Massachusetts, you have to notch at least a quarter-inch and no more than a half, and the same for New Hampshire, apparently Maine doesn't have any minimum standards on notching.

It really raises the questions about the v-notch rule and what are we accomplishing and how consistent are the standards? So, what I'm asking for is that the Commonwealth, for Massachusetts waters, go to an Area 1 v-notch definition, which is eighth-inch deep, which protects 75 to more – we haven't done all the sea-sampling, but at least a vast majority of these lobsters.

There is substantial renotching going on in our state because many fishermen do believe in this program. It just makes them very, very frustrated that other fishermen aren't being held to that same standard. We'd like to make this a more uniform standard in the state by creating an Area 1 eighth-inch. I think that's a reasonable request, and I don't think that it's going to compromise the conservation benefits of the current v-notch program.

We're not asking Maine and New Hampshire to change the same rules in the same way. In fact, as I mentioned in this letter, there is far more inshore/offshore movement – that's the general tagging study findings – as opposed to north/south movements. We don't think that we're going to be compromising the conservation of New Hampshire or Maine.

But then, again, as we point out in the memo, the offshore fisheries adjacent to Massachusetts are already subjected to far less rigor in terms of the v-notch. This is going to bring us toward a more uniform standard, it's going to improve the situation on the waterfront, it's going to allow our officers to use a verifiable tool to actually bring about better enforcement.

And, finally, Captain John Tulik is here. Although I don't work in our Division of Law Enforcement, if there are questions that I can't answer about the difficulties of the situation on the waterfront, I may ask him to come to the microphone. Thank you.

CHAIRMAN CULHANE: Okay, thank you, Dan. Kim McKown has some comments from the technical committee for us.

MS. KIM MCKOWN: Thank you, Dan, for doing a good job summarizing our comments. We got together with a conference call to discuss this proposal. We did feel from the information gathered by Carl Wilson and Maine, which was only from two trips in March, a little further offshore than most of the Area 1 fishery, but they did find approximately 19 percent of the v-notches were less than an eighth of an inch.

That's 19 percent actually of the man-made v-notches. 35 percent of the mutilated v-notches were actually less than an eighth of an inch. The committee did feel that by changing the standard to an eighth of an inch, there is a possibility of increasing harvest, but we couldn't quantify it. Part of that is due to how enforcement is interpreting it in Massachusetts.

We also felt that it would create different v-notch standards for the same conservation management area, and that is something that came up in the last assessment was to try to make our management a little more consistent in the conservation areas. As we were going through looking at the regulations and discussing v-notching, we also came up with the fact that Massachusetts actually does have regulations on how deep you must make your original v-notch.

It must be at least a quarter-inch deep and no more than a half an inch deep. Maine does not have regulations specifying how deep a v-notch must be. That will affect how long the v-notch will actually stay with the lobster. The technical committee is recommending that any jurisdiction that has regulations that you must v-notch lobsters, that they should also have regulations on how deep those v-notches should be. That's pretty much it from the technical committee.

CHAIRMAN CULHANE: Okay, thank you, Kim. Okay, I have George's hand and Pat after that.

MR. LAPOINTE: Thank you, Mr. Chairman, a couple of comments on Dan's memo first and then a couple of things he said, and then I want to ask him a

question. On the bottom paragraph, on the bottom of his memo it says, "It's our understanding that Maine wardens even carry v-notch gauges with varying triangle heights." That's not true.

I had those gauges made up for this board and we've had them in Maine to show people what various size notches were; because when we discussed the different notches, we discussed eighth, we discussed sixteenth and we discussed a thirty-second, because what everybody wants is an enforceable gauge. Joe and I were just actually looking at those last week; and for those of us with failing eyes, a thirty-second doesn't cut it, but a sixteenth does.

That's just one clarification; that those were there just to show people what different notch sizes were. When zero tolerance was put in Area 1, it was my understanding it wasn't a Maine issue; it was an Area 1 issue. It was not just Maine's industry; it was other industry members as well, and Area 1 wanted that. I think that's an important point to point out.

Then I have a question for Dan. If enforcement is a problem, isn't having a different gauge size for Area 1 Massachusetts fishermen in state and in federal waters going to be a problem? You've got another line and another standard. It's going to be an eighth of an inch in state waters and for those people with dual permits or federal permits it's going to be a different standard. It strikes me you're trading one enforcement problem for another, and that is a concern of mine.

Then my question for Kim is your technical committee report ended with a discussion on uniform v-notching depths, but your comment about the eighth of an inch definition was that we should have one standard in each management area. That's the best thing from technical perspective?

MS. MCKOWN: That's what we felt from an assessment perspective.

MR. P. WHITE: I have a number of questions. I guess one of the questions I would like to ask Massachusetts – and I would correct what they said in the memorandum here. There are actually four different standards in Massachusetts because you have one that doesn't require a clear v-notch in the Outer Cape area. I wondered why that wasn't part of your standardization practice. Everything else is with or without setal hairs and the Outer Cape is not.

I think trying to find whether you have one or three setal hairs or whatever is problematic as far

enforcement goes. My questions were – in reading the study that you are all referring to, I think, one, it's unfortunate that they only did sub-legals; and, two, the figures that they're showing in the study, first of all 97 percent of the lobsters notched were harvestable after one season and not two.

Nineteen percent of the lobsters – as I read through it, 19 percent of the lobsters would be retained with a zero tolerance as opposed to the eighth-inch notch, which is a fairly large percentage in my mind to preserve biologically, and 35 percent, as Kim said, of them had mutilated tails. There are female lobsters; 35 percent of those, if they're mutilated, are still – or 99 percent of the lobsters have the possibility of being egg producers, so that's not a bad thing. Those are all lobsters under the eighth-inch notch that we're throwing away as opposed to the zero tolerance.

MR. MCKIERNAN: Pat, your issue about how many lobsters are protected after the first molt, this Rhode Island study had to do with the old-fashioned definition, the quarter-inch no setal hairs. It didn't have to do with our eighth inch. It's the 3.1 eight millimeter standard with or without setal hairs is the one that we're suggesting.

CHAIRMAN CULHANE: Kim wanted to clarify something.

MS. MCKOWN: I believe the Massachusetts regulations will cover mutilated flippers, so that 35 percent would be covered with their regulations. Also, there is a study that looked at eighth-inch v-notch, and that protects a lobster for two molts.

MR. P. WHITE: But, then, what is the difference between the two molts and the eighth-inch versus the zero tolerance in terms of the length of protection?

MS. MCKOWN: That's unclear. There really hasn't been a study that looked at that.

MR. SMITH: Well, I was just asking Mark the same thing. It seems like if one-eighth protects for two molts and zero tolerance protects for a little bit more, it's going to be towards two or a little better, probably not much more protective if you look at the difference between the protection from a quarter to an eighth. Then from eighth to zero tolerance, you pretty much get to – it's all about two molts.

MR. R. WHITE: Thank you, Mr. Chairman, question for Dan. In your description you talked about a lobsterman catching the same lobsters that are in the gray area. I guess my question is, isn't it standard

practice, when a lobsterman catches a lobster and it's v-notched but it's growing in and it's not clear, don't you v-renotch that lobster; isn't that kind of standard practice?

MR. MCKIERNAN: Well, that's a question for the industry, but the regulations don't mandate renotching. A female that has no eggs, there isn't a rule that says you must renotch and throw it back. What I'm suggesting is I think a lot of that is happening, especially as I call it defensive v-notching. The guys are going to renotch that lobster because they want the guy in the boat next to them, or the dragger or the gill netter, taking it if they're subjected to less strict rules.

That is happening, and we endorse that. That's great; we're all for protection of females, but the problem is these standards aren't consistent. You know, Maine doesn't have a minimum depth to ensure that we're going to get two-plus molts. Down on the waterfront you have different rules in the markets.

The Massachusetts markets have a different standard than the Maine markets, because we have to accommodate the quarter-inch v-notch of the Outer Cape or the eighth-inch v-notch in Area 3 or the eighth-inch v-notch in Area 2. I guess the theme of this is this is so close and yet so nebulous that fishermen who endorse v-notching are going to do that, and we just want to give law enforcement some tools for which to enforce this.

Now, if this goes down in flames, then our enforcement officers, our agency can certainly create a de facto standard or policy, an internal policy that no one will know about, and it will be up to the major and his officers, and maybe that's the way this gets resolved, some kind of de facto standard that it's just internal policy.

MR. P. WHITE: I had two more questions, if I might, one for Kim. When they do a v-notch study anywhere, do they take into consideration the growth rate of a sub-legal lobster versus like a two-pound lobster; is the ability to retain a notch any greater or less in the size differential? The other comment I'd just like to make I think for everybody here is although it's going to be a one-eighth notch in Area 1, the major portion of the Gulf of Maine in the offshore Area 1 fishery is zero tolerance.

MS. MCKOWN: I don't have the specifics of the report.

MR. SMITH: Before I make the two points I wanted to make – and I'd better write them or I'll forget them – could I just ask Pat White, the point he just made, the largest share of Area 1, the offshore area will be under zero tolerance?

MR P. WHITE: That's a self-imposed regulation by the Shaft Master Corporation; they insist on zero tolerance. It's not a law.

MR. SMITH: Okay, but the regulation is one-eighth?

MR. P. WHITE: Absolutely.

MR. SMITH: That's what I thought. Okay, my two points – and, Dan, don't take this as an admonishment, but I'm looking across the table watching George's blood pressure. It's important I think in this debate not to be pointing out a perceived deficiency is what Maine is doing to try to make and make a case for what Massachusetts would like to have. I'd rather devote myself to what Massachusetts is trying to do and see if it makes more sense than we're doing now. Thank you for that.

In Dan's memo of January, on the second page, he made a real good point, and it's what I tried to say before and it came out incoherently so I'll try again. Zero tolerance assumes protection to lobsters through two molts. The study that Brian DeAngelles of NOAA did showed that a one-eighth definition protected all through the first molt and almost all of them through the second, so, really, it's six of one and half a dozen of the other.

I think when I see that presumption on zero tolerance and the fact on one-eighth, I tend to lean toward a state who says, you know, no matter how much inconsistency there might be between two adjoining or not even adjoining states, but two states in Area 1, I'd rather not be Massachusetts and have three different standards to have deal with, which is making me lean towards one-eighth and maybe in time other places will actually come to that place, too.

But if they don't, you know, what is the greater good we get out of it, and it seems like with one-eighth all of the waters from Cape Ann or wherever the end of Massachusetts is down to Rhode Island and then through Rhode Island, Connecticut and New York we'd all be one-eighth, including the EEZ if that rule passes. I'd kind of leaning that way.

MR. LAPOINTE: I want to follow up on my question earlier, which clearly I didn't state very

well. If we're concerned about enforcement consistency, what this will do is say that the fishermen in Area 1 portions of Massachusetts, state water fishermen will have one standard and federal water fishermen will have another standard, and it strikes me we're trading one enforcement problem for another.

I want to ask Dan or their enforcement officer their response to that. Then what portion of Area 1 Massachusetts fishermen have dual permits which would – you know, if it's a high proportion, it suggests to me there would be a high degree of concern about how you would enforce this for fishermen who fish inside and out of state waters.

MR. MCKIERNAN: Well, I'll let John Tulik to that particular issue about the dual permit holders.

CAPTAIN JOHN TULIK: I am Captain John Tulik with the Massachusetts Environmental Police. That is a tough one. The main reason I'm here is to address the problem – I call it an oxymoron zero tolerance. Some officers, some fishers would say this lobster is definitely v-notch; others don't. Unless you have a physical gauge to put in there, it eliminates the gray area, and that's why I'm here.

We have officers who are strict, right out of the academy – yes, you know, that's a v-notch. Any part of the flipper that's missing that could hide or obscure a v-notch of any size, and that's where the gray area is. If we had a gauge, sixteenth, eighth, I don't care, just something physically that we could put in there and show the judge, show the people in the court, it's black and white, there are no gray areas. The fishers in Massachusetts, they explain this to me, it takes a long time to decide whether it's a v-notch or not instead of just sticking a gauge in there. That's all I'm here for.

MR. LAPOINTE: But, again, we're talking about enforcement consistency, and so my question is are we trading one problem for another? It's only Massachusetts state waters' portion of Area 1, and so for those – I'm assuming a fair number of people, a fair proportion of the fishermen up that way have both state and federal permits, if they get boarded and George LaPointe Fisherman has been fishing both sides of the line or he says he was on the inside and not the outside, it strikes me that would make enforcement of what is being proposed very difficult.

CAPTAIN TULIK: I like the visionary statement that was just made a little while ago. Maybe the

whole area can become one-eighth and make things a lot easier.

CHAIRMAN CULHANE: Dan, did you want to respond to this or should I go on? I had Dennis Abbott next on my list.

REPRESENTATIVE DENNIS ABBOTT: Thank you, Mr. Chairman. Eric alluded to it, using one state versus another to make your point, but it raised a curiosity in my mind about Maine not having a minimum depth for notching. I was wondering if someone like Pat White could comment as a lobsterman of what actually is the common practice. It would seem logical to me that if I'm going to have to v-notch, I would put a pretty good v-notch in it if I'm going to be throwing it overboard. Maybe the advisors could comment to that. I would like to hear that to put this issue to bed.

MR. BAINES: I was waiting to comment on this issue, anyway. The advisory panel did not discuss this. I'm not sure why we didn't but we didn't. I'm speaking as a Maine lobster fisherman, and I can confidently say I'm speaking for the lobstermen from the state of Maine, also.

On a daily basis I throw back hundreds of v-notched lobsters. Many of those lobsters that I throw back I renotch with a v-notch tool that is roughly half an inch deep. That is the standard practice. Some guys still use knives, but you'll find on most boats a v-notch tool. I want to address the difference between our zero tolerance. The state of Maine law says a definitive "V" of any size is our law.

Be it a definitive of any size, a sixteenth, an eighth, a quarter, whatever it is, it's all a matter of interpretation. I look at lobsters every day and I have to make that judgment if there is a notch there. If there is a notch there, is it something I just throw back over or do I renotch it and throw it back over. I renotch anywhere from ten to thirty lobsters a day, 40 lobsters a day.

Those lobsters are then protected through two or three more molts, and that's what we're talking about here. If we lower the standard – we're trying to protect this resource, and everyone's goal here is to protect the resource. If we lower the standard, then we will be taking more lobsters out of the resource and that I think goes everything we're doing here.

Massachusetts certainly has a problem. I do understand it, but it's an enforcement problem. It's a matter of interpretation by the fishermen,

interpretation by law enforcement and it has to be the same standard. The standard, in my opinion, is what it is now, and you're doing a great disservice to the industry if you lessen the standard.

CHAIRMAN CULHANE: I have Bill and then I have Lance and Dennis Damon on the list, and then I'd like to kind of get this issue moving along.

MR. ADLER: Thank you, Mr. Chairman. First of all, I'm not sure how the feds deal with when we do conservation equivalency measures on various things, how the federal system adjusts to that quickly, but this would be what we're doing here is a conservation equivalency procedure. That's one thing.

Secondly, as John Tulik was saying, we're trying to get something that doesn't end up with an interpretation, a subjective interpretation of what is or isn't that they're looking at. Remember that the mutilation part is still there as always. You know, if it's mutilated, it's a "V", there is no argument there.

Also, the definition in the addendum is a v-shaped notch of any size. Some of the males that seem to be v-notched or something and some of the indentations, basically in a court of law, a v-shaped notch; the judge looks at it before he throws everybody out and says, "I've got a more important case to deal with than what I'm supposed to be looking at here."

The idea of wording it with a one-eighth, with or without setal hairs, notch or indentation actually could help the situation here rather than the current definition we have now, which has to be a v-shaped notch of any size. That's where the argument is that a v-shaped or is it a "U"; is it this, is it that, you can barely see it.

And as was mentioned before, we would like to be working on getting as close to having the same rule, for instance, at least in the v-notch department of the three biggest areas in Massachusetts all having the same v-notch definition. Since the technical committee and scientists basically said it's just about the same value, I think we've had several cases where "close to" has worked in lobster for various states.

We can understand that, "close to" in some of the other issues. I think that this is close enough and it resolves a lot of problems that we're having and also moves things closer to having a little bit of uniformity in a very complicated situation. Thank you.



DR. LANCE STEWART: First, I think we should look at what the objectives of the v-notch are, and that is to assure two reproductive cycles. In many cases the different areas, like in Area 6 we have a greater number of reproductive lobsters of much smaller size, that when we're v-notching we can almost assure that we're going to get two reproductive cycles out of the animal.

In the Gulf of Maine, as I know from the biology of lobsters, they're much larger and the maturity rate isn't achieved. They're initial notching is based on egg females, so that they've proven to be reproductive in the population so that it stands to reason we'd be renotching or they could be renotching until they reach maximum size.

There is a good foundational objective that Maine has, and the zero tolerance is an added motherhood aspect of it, but I can see a real problem as we have several other conservation motives, the North Cape oil spill recovery, of just increasing the basic number of reproductive females; not that there were eggers or anything but that they're just females that have been repurchased.

So there is a great difference and the south shore of Massachusetts is subject not only to the Cape v-notch program but now the Long Island Sound v-notch program. We feel very comfortable that one-eighth assures the biological reproductive motivation. So the goal is there, and I think it's the prerogative of Maine to decide to keep their old historical standards, but I should support the one-eighth for Massachusetts.

SENATOR DENNIS DAMON: Thank you, Mr. Chairman and ladies and gentlemen of the commission. As I sat and listened to this whole discussion regarding v-notching and females and reproduction, my mind goes back to about 55 years ago when I was first on the boat with dad, and he taught me some things. He was explaining to me about lobstering.

He said, "This is your gauge; you can't keep them if they're too small and you can't keep them if they're too big." "Why?" "Well, if they're too small we want them to grow up and too big they're part of the brood stock so that they're going to have more babies and you'll have more fishing when you come time to fish."

He also said, "This is a punched lobster." He called it a "punched lobster" at the time. I understand that apparently there might have been some tool whereby

a hole was placed in the flipper. This was before my time. But it was in fact a v-notched lobster, and there was no tool to do that; it was his knife.

I said, "How come that's there?" He said, "Well, it's because this lobster has eggs" – and he showed me the eggs – "and when those eggs hatch and that lobster is now crawling on the bottom and somebody else catches her, they'll that she is capable of bearing eggs and they'll put her back because that also increases the stock. That's for you to catch."

We're talking about a bunch of things which seem to obscure the reason why we're having a v-notch program. Is it a quarter inch, is it a eighth inch, is it a thirty-second, are there setal hairs? His definition to me and one that I would presume many of the fishermen go by at least in Maine is that if there is damage to that flipper – and, oh, by the way, it used to be the middle flipper that was punched until we found out that was an avenue for infection coming into the digestive system of the lobster and so now it's moved over one.

If there is any damage to that, as just as Bob Baines has said and there is any question, you first find out if that's a female lobster – and that's fairly easy to do with the longer eyelashes and the lipstick – but you then re-punch it to take that issue away from the people who would catch it next, and you're on hauling the rest of your traps and you go home at night and you know that you have done what you can do to help ensure that stock that's on the bottom.

It was mentioned that – we've got a couple of things. I never knew that the intention of this was to assure two reproductive cycles. If it is, that's good, I guess. I always thought it was just as I said; it was to protect that lobster because she has demonstrated that she is capable of bearing eggs. But it also has been said that fishermen who endorse the v-notching program are going to continue to support the process, and I hope that's the case. I know it's the case.

But the converse is probably also true; for fishermen who do not endorse the v-notching program are going to continue to try to circumvent its rules. And if what you need to survive is to keep that lobster because you're unclear or the rules allow you to think you're unclear, then I think that is a real important part of why we're in a process that we are today in trying to protect our resource.

So, I would say that there ought to be no question that if that flipper is mutilated, whether it's a v-notch or any kind of a mutilation, that it ought to go back.

It's that clear to me and it's that clear to I think the fishermen in Maine. And for us to spend this amount of time on it, it's an important piece, but it's one that we really ought to put to bed. Thank you.

CHAIRMAN CULHANE: I have Ritchie White and then I have Doug Grout, and then I'd like to get a motion on the table so we can move on with this.

MR. R. WHITE: I just wanted to follow up on the issue that George raised about the dual permit holders in Area 1. My understanding is that the most restrictive rule would be in effect, and therefore you would be creating – I think you're creating more of a problem than less of a problem because now you're forcing – you're not forcing; you're going to have zero tolerance on many of these boats. I guess I don't understand what this accomplishes if that's the case. Am I correct in that the most restrictive rule does take affect for the dual permit holders?

MR. MCKIERNAN: Well, I guess it begs the question what is a zero-tolerance lobster? As I mentioned earlier, if this isn't approved I guess our Office of Law Enforcement is free to create informal standards about what holds up in court and what doesn't. The point is that a lot of this is going to be enforced at the dock, not necessarily at sea, and it still gives – I mean, the Massachusetts officers or the Office of Law Enforcement is still free to establish its enforcement standards within the confines of what zero tolerance means.

I mean, the Maine language stops short to say what it is; I mean, any size, any nick. It's purely subjective. This is clearly a step toward getting reconciliation amongst these areas. You can see that the lobsters that migrate out of Area 1 are heading to two places where they're going to be harvested under a different standard; and if you don't see that as an advantage so we can bring everybody into the same standard, then I can't convince you.

MR. R. WHITE: Follow up, Mr. Chairman. My question is you're trying to do away with the zero tolerance for a better definition – I understand that – but under the most restrictive rule you won't be doing away with the zero tolerance. It's still going to be in place for the dual permit holders; isn't that the case?

MR. MCKIERNAN: That's true and maybe in the next addendum we come back and we offer up a proposal to go to eighth inch for Area 1 in its entirety. This is a hot-button issue for the Massachusetts fishermen. We had eleven Massachusetts representatives to Area 1 LCMT sit

across the room from eleven Maine representatives, and the guys on the left side of the room wanted an eighth inch and the guys on the right side did not, so how this board reconciles that in future actions will be difficult.

But, clearly, you can see in the southern Gulf of Maine where, by the way, the incidence of egg-bearing females is far greater among small lobsters, the size of maturity of the lobsters in the southern portion of the Gulf of Maine, the Massachusetts Bank, Cape Cod Bay, is approximately twice that than that in the eastern regions or the more northern or eastern portions because of temperature differences, just as lobsters down in the southern regions are all sexually mature at minimum size.

I understand Senator Damon's philosophies about why we should put those lobsters back, but as you get further south in the range of the Gulf of Maine you have far more reproductive females down our way, and so the contribution that we're making to stockpiling reproductive females has been enormous. I think the current rate is about 28 or 29 percent of all females are now coming up v-notched in catch; whereas, it was 1 or 2 percent in years past. We don't expect that to change.

CHAIRMAN CULHANE: We have Massachusetts Law Enforcement who would like to respond to that.

CAPTIAN TULIK: To address the dual permit problem, Dan McKiernan, could we put a landing regulation on there any permit holder endorsed for Area 1 and make it the eighth inch?

MR. MCKIERNAN: Well, our regulations would go forward, and our regulations govern Massachusetts lobstermen in state waters and those authorized to fish in Area 1. If there is a more restrictive measure on the federal side, I guess if there was federal enforcement, then those federal officers would be free to use its discretion as to what zero tolerance means.

CHAIRMAN CULHANE: I'm going to take Doug's comment. I saw a couple of other hands, but I would like to get a motion on the table before I take any other comments after Doug, and we can draw this to a close. Thanks.

MR. GROUT: Well, Ritchie had actually asked my question, but then Dan's answer begs to me the question of how do you apply the zero tolerance? Does that mean that Massachusetts Law Enforcement would not enforce – not the zero tolerance but the

most restrictive rule? Does that mean that Massachusetts would not enforce the most restrictive rule if somebody had a more – if a dual permit holder was coming in with an eighth-inch v-notch? And does it work the other way around; does that mean that NMFS isn't going to be enforcing things where a state may have the most restrictive rule?

CHAIRMAN CULHANE: Okay, I would really like to get a motion on the table now, if we could, and then we can get back to comments on it. Bill.

MR. ADLER: Thank you, Mr. Chairman. I'll make a motion to allow Massachusetts Conservation Equivalency on the v-notched definition for Area 1 to allow it to go to one-eighth inch, with or without setal hairs. I would also like to add that the wording would say "that bears a notch or indentation at the base of its flipper that is at least one-eighth inch deep, with or without setal hairs". That's the motion.

CHAIRMAN CULHANE: Thank you; do I have second? Seconded by Mark Gibson. Discussion? George.

MR. LAPOINTE: Dan made a comment that troubles me about if the federal officers were going to enforce it, that's okay, and the implication was your guys might not. Well, you did say if federal officers wanted to enforce it, that they could, and I would hope that we do the right thing and you enforce those rules. You may not have thought you said it, but that's what I heard, and so that troubles me.

I would like to hear from the Law Enforcement Committee because I think that's important. Then the last thing, with every law enforcement issue, there is discretion. If you make an eighth of an inch definition, guess what, if it's close, enforcement officers and a judge maybe are going to have to make a decision, if it's a quarter inch.

There is always going to be enforcement discretion. That's what we pay people for. And you will get variability among officers, and so there is going to be an enforcement discretion issue regards of what that standard is. I would like to hear from the Law Enforcement Committee because I believe they discussed this a number of years ago.

CHAIRMAN CULHANE: Well, I just checked with Joe. I had asked him before and I asked again just to make sure I remembered it correctly, and the Law Enforcement Committee has not taken up this particular proposal by Massachusetts. I don't know if it's fair to ask Joe to do that now. Dennis.

REPRESENTATIVE ABBOTT: Thank you, Mr. Chairman. The Honorable Senator from Maine made some points which I thought we should pay a lot of attention to. As the conversation was proceeding, I was looking at my copy of the five-year strategic plan, and I saw a statement by President Theodore Roosevelt who said, "The nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased and not impaired in value."

I think one of our jobs here as commissioners is to protect the resource, and I feel very strongly about that. I don't see that this proposal by the Commonwealth takes us in that direction. As the previous speaker just stated, there is always going to be interpretation, and I think it's very important to us to apply the strictest standards. In this time of diminishing resources, I think applying the zero standard is the direction that we should turn. I think also that we've probably had more than enough discussion. I'm not necessarily wanting the last word, but I would like us to move the question.

CHAIRMAN CULHANE: Okay, thank you, Dennis. Lance, were you going to say something?

DR. STEWART: One thing that is glaring in all this is I guess standardization of where the v-notch is. The thing that bothers me about the report from the Gulf of Maine survey is that it doesn't really indicate the specific part of the anatomy of the lobster. Dennis alluded to the old method of tagging the central flipper was really jeopardizing the anatomy of the animal.

In Bill's motion it should be stated that the v-notch should occur in the proximal uropod and not the flipper. It's easy for somebody to go out there and assess the whole fan and find mutilation aspects, and so I ask the state of Maine are the standards really there that the fishermen really do target that right uropod. Now they are so that's good, but I think in our reference to exactly how we conduct v-notching and how we identify it, that's clear, that the anatomy is specific.

CHAIRMAN CULHANE: Doesn't that go beyond just this particular proposal, then, in how we define v-notch altogether?

DR. STEWART: Well, I think it's specificity of how it's conducted, but then also when you're doing an enforcement, that it refers to the right proximal uropod with a v-notch or an indentation. It's just the terminology that I'd love to see there, so that we

don't have some people going out and v-notching the left and then all of a sudden the legality is in question.

MR. LAPOINTE: In the state of Maine it talks about turning them over on their back and looking on the – you know, we don't call them "uropods"; we do call them "flippers". It's quite clear about what they have to do. If all the other ones are notched up and that one is perfect, it's okay. I mean, that's not a question before us today. Vito and then I'm going to call the question.

MR. VITO CALOMO: Thank you, Mr. Chairman, I'll be brief. It isn't quite clear. There is mass confusion for years going on in the notches. Holy mackerel! I read in different newspapers of people being caught because it isn't quite clear. Whether it be Massachusetts, Maine, New Hampshire, Rhode Island, Connecticut, it isn't clear at all.

I listened to my friend, Senator Damon over there, speak about his father. I have just recently had our commission meeting May 2<sup>nd</sup> or May 1<sup>st</sup>, I believe it was, and a gentleman that sits on the commission, who is about 76 years old, said the same thing his dad said. I'm just wondering if we're missing the boat sometimes. What he said is that the confusion between the size of the v-notch and the setal hairs and so on and so forth is mass confusion to all lobstermen.

It's confusion to all enforcement agencies. Like you say, different people recognize a v-notch at a different size. Mr. Chairman, what Senator Damon's father said and my commissioner, that's again about 76 years old, said why don't get you rid of all that v-notching and let time go by and use a hole punch, a standardized hold punch on that tail? It would stay longer than one or two years.

Mutilation is mutilation; that's clear. I think Damon's father and my friend that sits on the commission are quite clear. I think it's time for some kind of change. I know we've been working on this for years, but it's confusion today, yesterday and there is going to be confusion tomorrow. Thank you, Mr. Chairman.

CHAIRMAN CULHANE: Thank you, Vito. I think at this point we're ready to take up the motion. The motion is move to allow Massachusetts the definition for a v-notched lobster is any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as one-eighth inch with or without setal hairs. V-notched female lobster also

means any female that is mutilated in a manner that could hide, obscure or obliterate such a mark. Motion by Mr. Adler; seconded by Mr. Gibson. Do we need a couple of minutes to caucus?

MR. LAPOINTE: Mr. Chairman, we need a clarification first. It's brought to my attention this applies to any Massachusetts lobster including the Outer Cape. This does not say Area 1, and so if that's what you want, read the motion. I mean, people were going to say let's see what happens; let's clarify and be clear. This regards Area 1?

MR. ADLER: I did say Area 1.

MR. LAPOINTE: Well, the motion doesn't say that, Bill. I apologize for cutting in, but that's a pretty important clarification.

MR. ADLER: For LCMA Area 1 – maybe we should say definition for Massachusetts LCMA 1. I'm not trying to do it for anybody else. Is that clearer?

CHAIRMAN CULHANE: Move to implement a definition for Massachusetts Lobster Conservation Management Area 1 state waters for a v-notched lobster is any female lobster that bears a notch or indentation in the base of the flipper that is at least as deep as one-eighth inch with or without setal hairs. V-notched female lobster also means any female that is mutilated in a manner that could hide, obscure or obliterate such a mark. Motion by Mr. Adler; seconded by Mr. Gibson. Do we need a couple of minutes to caucus?

(Whereupon, a caucus was held.)

MR. SMITH: The v-notch size in the Outer Cape is one-quarter of an inch. Was it the intention of this motion to also make the Outer Cape one-eighth of an inch?

MR. ADLER: No.

MR. MCKIERNAN: No, Outer Cape is a stand-alone area with its own LCMT, and they haven't met, discussed or anything. We're talking simply about this eighth inch being a functional equivalent to zero tolerance. There is a less restrictive standard in the Outer Cape which this does not attempt to address.

CHAIRMAN CULHANE: Okay, has everyone had enough time to caucus? There has been a request for a roll call vote. Toni.

MS. KERNS: Maine.

MAINE: No.

MS. KERNS: New Hampshire.

NEW HAMPSHIRE: No.

MS. KERNS: The Commonwealth of Massachusetts.

MASSACHUSETTS: Yes.

MS. KERNS: Rhode Island.

RHODE ISLAND: No.

MS. KERNS: Connecticut.

CONNECTICUT: Yes.

MS. KERNS: New York.

NEW YORK: No.

MS. KERNS: New Jersey.

NEW JERSEY: Abstain.

MS. KERNS: Delaware.

DELAWARE: Abstain.

MS. KERNS: Maryland.

MARYLAND: Abstain.

MS. KERNS: Virginia is absent from the table.  
North Carolina.

NORTH CAROLINA: Abstain.

MS. KERNS: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: No.

CHAIRMAN CULHANE: The motion fails. The next item on the agenda is to consider Lobster Conservation Management Area 6 Conservation Equivalency Program. Eric.

## **LCMA 6 CONSERVATION EQUIVALENCY PROPOSAL**

MR. SMITH: Thank you, Mr. Chairman. Hopefully, these will be very brief, both because they're written to be one page for each of the ideas; and, second, it's

the first time on v-notching in Area 6 where the technical committee actually agreed with us, so I call that a resounding success, I think.

The two issues we had here were in retrospect looking at the temperature regime in Long Island Sound. We wanted to be able to v-notch a full year's worth of lobsters between when the water declined below 20 degrees in the fall and when it exceeded 20 degrees in the summer. Because of the way the gauge increases occur on July 1<sup>st</sup>, according to the addendum, we didn't pay a lot of attention to that until we started looking at the actual temperatures.

It turns out we can notch almost through the entire month of July at 20 degrees. I'm going to rush here because time is short. I had sent this to each of the state director commissioners, hopefully to consult with your other members, and it was on the CD. That part of the proposal is simply to allow us to use the lobsters notched in July to be counted with the ones notched from November through June to make one full cycle of notched lobsters towards meeting our target. That's that part.

The other part was just something we had implicitly promised to do back when you approved this v-notch program in August. That was if we did decide to v-notch short egg-bearing lobsters, there was going to be a conservation discount because of their protection occurred when they were under the gauge and therefore we didn't deserve to take that as credit due to v-notching.

What had we said in that proposal was you get half credit. Instead of two years' protection for a notched short, you would get one year of protection. That other one pager simply shows a mathematical method so that we don't have to argue about it in August as to how we would account for shorts and eggers when they're notched versus how we account for the keepers. That's the two issues. I will move to request the board approve both of these proposals and simply not say much more about it. If there are questions, I'd be happy to answer them.

CHAIRMAN CULHANE: Okay, we have a second by Pat Augustine.

MR. SMITH: The motion, to clarify for Joe and ourselves, these are the two proposals under the letter of March 5<sup>th</sup> to the chairman of the board, Brian Culhane. The first of the proposals has a footnote date of March 26<sup>th</sup>, and it's a proposal Addendum XI compliance dates. The other one is footnoted April 2<sup>nd</sup>, 2008, and it's titled "method to adjust Lobster

Management Area 6 v-notch targets due to the notching of sub-legal and egg-bearing females”. By the way, the handout was on the table, as well, in the back of the room.

CHAIRMAN CULHANE: Is there any discussion on the motion?

MR. SMITH: The technical committee did have a conference call on this subject as well.

CHAIRMAN CULHANE: Kim, could you summarize the technical committee report for us?

MS. MCKOWN: The technical committee does not oppose extending the evaluation date until the end of July. We also did not oppose the method for calculating the v-notches. Though we do continue to have reservations on the program, we feel that it does need to be evaluated annually. We’re also concerned because it really goes against and undermines the comprehensive management approach of Addendum XI.

CHAIRMAN CULHANE: Thank you, Kim. Any other comments? Okay, why don’t the states take a minute to caucus and then we’ll consider the question.

(Whereupon, a caucus was held.)

CHAIRMAN CULHANE: Are we ready for the question to be called? I’ll read the motion: Move that the board accept these two proposals under the letter to the board dated March 5<sup>th</sup>, 2008, to adjust Addendum XI compliance dates and adjust LCMA 6 v-notch targets. Motion by Mr. Smith; seconded by Mr. Augustine. All in favor; opposed; abstentions; any null votes. The motion passes. The vote was six in favor, two opposed, three abstentions. The next item on the agenda is the advisory panel report by Bob Baines.

#### **ADVISORY PANEL REPORT**

MR. BAINES: There is only one other issue that the advisory panel wanted to bring to the attention of the board. The advisory panel also discussed crab traps in offshore waters. There has been an increased awareness that crab traps are being set in larger numbers. There appears to be some confusion on the part of some fishermen if trap tags are necessary in these traps.

These traps have the potential to increase effort and lines in the water in areas where the board and

NOAA Fisheries have promulgated regulations to decrease effort. This is also becoming an issue in nearshore waters with sea bass, scup and conch traps. We just wanted to bring that to the board’s attention.

CHAIRMAN CULHANE: Okay, Toni had a comment on that.

MS. KERNS: I also would like to bring to the board’s attention that this will be an item discussed by the Law Enforcement Committee tomorrow as well.

MR. R. WHITE: How does it increase effort?

MR. BAINES: Because some of these crab traps are able to catch lobsters.

MR. R. WHITE: Can you possess lobsters out of a crab trap?

MR. BAINES: I can’t answer that. This was brought to the advisory panel from some of the offshore fishermen, so I’m not real familiar with the issue. They might have both lobster and crab permits; I don’t know.

MR. R. WHITE: But if it didn’t come out of a trap with a trap tag, it can’t be possessed, can it?

MR. GIBSON: I think in some jurisdictions they can under the 100/500 provision, so these sorts of pot-catching devices can begin to masquerade as non-trap gear, not subject to pot allocations and so on. Individuals that have minor pot allocations under the new effort control system may derive a significant lobster catch from non-lobster trap gear that’s not allocated the 100/500 count, and it becomes very difficult for an enforcement officer to determine a boatload of lobsters, what gear they were caught in. It’s an up-and-coming issue and needs some addressing.

CHAIRMAN CULHANE: Any other comments on this? Okay, we’re ready to move on to Number 9, PRT Compliance Reports.

#### **PRT COMPLIANCE REPORTS**

MS. KERNS: Thank you, Mr. Chairman. The plan review team met via conference call to review state regulations regarding the Lobster FMP. The majority of this call focused on looking forward to Addendum XI regulations. With the upcoming Addendum XI regulations, which should be implemented by July 1<sup>st</sup>,

2008, Lobster Conservation Management Areas 2, 3, 4, 5 and 6 all have new maximum gauge sizes.

Area 3 is at 7 inches and the rest are at 5-1/4. This is for both males and females in all sectors of the fishery, both recreational, commercial trap and non-trap. There is also the new v-notch definition of one-eighth of an inch for all of these areas. The PRT requests that states send their regulations to the commission by July 1<sup>st</sup>, 2008, for a review of those regulations.

The PRT recommends that if the board grants de minimis status to the states that request it, that they be required to implement the maximum gauge size as well as the v-notch regulations. The board has to specifically state and require additional regulations beyond the coast-wide regulations for de minimis states in the Lobster Plan.

The PRT also requests that each state report clearly that the maximum size applies to all fishing sectors. In some states' regulations it's very difficult for the PRT to ascertain what sector maximum sizes and minimum sizes are applying to. Then PRT had a couple of housecleaning issues for a couple of the states for regulations.

The Commonwealth of Massachusetts should update their Area 6 gauge size and vent size. The State of Rhode Island should update their Outer Cape Cod gauge size and their Area 1 regulations, as well as implement the 10 percent conservation tax on whole or partial business sales. When I spoke with the state, they said that would be a part of their transferable trap plan program.

With New Jersey, New Jersey is currently in the process of working on implementing the reporting requirements of Addendum X. The plan review team suggested that they work with NOAA Fisheries to determine the total number of permitted lobstermen that report landings via the federal VTR system for their federal permit holders.

The majority of lobstermen in New Jersey have federal permits, and I believe from their report there are only ten lobstermen that actually have state-only licenses in New Jersey.

And lastly, the states of Delaware, Maryland, Virginia and North Carolina all applied for de minimis status, and they meet those requirements.

CHAIRMAN CULHANE: Okay, we need a motion to state that Delaware, Maryland, Virginia and North

Carolina meet de minimis states but that they need to meet the maximum gauge size and the v-notch definition. Pat.

MR. P. WHITE: I would make that motion. I would move that the states of Delaware, Maryland, Virginia and North Carolina be granted de minimis status and have to comply with the minimum and maximum gauge sizes of Addendum XI.

CHAIRMAN CULHANE: Okay, we have a motion by Pat White and seconded by Dennis Abbott. Discussion on the motion? Okay, seeing none, does anybody need time to caucus? Okay, all in favor, raise your hand; any opposed; any abstentions; null votes. The motion passes. I have a comment in the back. Dave Spencer, do you want to say something? I'm sorry if I missed you before we voted.

MR. SPENCER: Thank you, Mr. Chairman. Just for clarification, Area 3 will go up on the gauge again this year. Should that be included in this as a compliance measure? Even though it's adopted, it will change I think the 1<sup>st</sup> of July. Thank you.

MS. KERNS: It's part of the compliance measure for the addendum, and that was stated during my presentation. Are you looking for a compliance measure outside of that?

MR. SPENCER: No, I'm sorry, I was looking on the sheet and I didn't see it. Unless I missed it, I just want to make sure that the states will adopt that and all Area 3 permit holders will be held to the 3.5 inch minimum size effective I think it's July 1<sup>st</sup>. Thank you.

CHAIRMAN CULHANE: Okay, the next item on the agenda is the stock assessment update by Kim McKown.

### **STOCK ASSESSMENT UPDATE**

MS. MCKOWN: Okay, I'm going to go through the timeline. I just want to let you all know that the stock assessment timeline has been delayed. A lot of that is due to just delays in data gathering and developing the lobster data base. It's still a little more complicated than we had expected.

At this point the TC is going to meet in a couple of weeks to start doing gap filling. The gap filling will be done in the middle of June. We have a deadline in July to have the catch-at-age matrix developed, and that's necessary to have that information to start our modeling runs. In August we're going to have a

modeling workshop and start running with the catch-at-age matrix – sorry, catch at length. I’m still thinking fish.

In September we’re going to have individual stock groups working on their model. We’ve broken up the stock assessment into teams to work in each stock area. In October we’re going to have our last modeling workshop. In November we are planning on having the final report due and review by the TC. In December the report is due to the peer reviewers. In January we are planning on having the external peer review, and the board will receive the documents and it should be presented at the February board meeting.

MR. P. WHITE: Well, is the only date change, then, from May to June? Everything else seemed to be right on schedule, then.

MS. MCKOWN: The original plan was to have the peer review completed and to bring the information to the board at the annual meeting in October, and so we’re missing that deadline and it’s being pushing to February.

CHAIRMAN CULHANE: We need a motion to accept the proposed new timeline. Motion by Pat White; seconded by Pat Augustine. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Just the last item on here in Toni’s report, it says the PRT suggests uniform language on the placement of escape vents within traps. Why can’t we –

CHAIRMAN CULHANE: Pat, we’ve got a motion on the table. I’m sorry I didn’t recognize you while you were waving the paper at me before but that’s the last item, so let’s get rid of this. All in favor, raise your hand; any opposed; abstentions; null votes. The motion passes. Now, Pat, I’ll allow you one minute to go back to old business.

MR. AUGUSTINE: Thank you, Mr. Chairman, it will take 30 seconds. The PRT suggests uniform language in the placement of escape vents within traps. Can we just make that a given or a requirement as long as you’re recommending it? I didn’t see anyone say no, so what would be our next course of action?

MS. KERNS: The next course of action would be to define where we would need to put the escape vents and then we would have to put it into an addendum and send it out for public comment. The board would need to direct –

MR. AUGUSTINE: Mr. Chairman, would you suggest we do that or would you entertain a motion to put it on the agenda?

CHAIRMAN CULHANE: Well, are you suggesting we do that, Pat?

MR. AUGUSTINE: I quite frankly don’t care, but I think it would be clarification and we would be consistent across the board. I move that we start an addendum to develop language that’s consistent describing escape vents within traps.

CHAIRMAN CULHANE: I don’t see a second for that. George, did you have your hand up; did you want to say something?

MR. LAPOINTE: I suggest that we have staff keep this on the tickler list and when the next action comes along we put this in what I assume will probably be an addendum, so that we don’t a separate action just for this relatively minor issue.

CHAIRMAN CULHANE: I really like that idea, George. Does that satisfy you, Pat?

MR. AUGUSTINE: I love that idea, thank you, George.

CHAIRMAN CULHANE: Okay, the next item on the agenda is the LCMT report for LCMA 1. Doug.

### LCMA 1 UPDATE

MR. GROUT: Mr. Chairman, this will be brief. Probably the most significant action that they took was to start a working group to look at a limited entry program that would be history-based. The subcommittee has been formed, and their intent is to bring back – their goal is bring back an initial plan at the annual meeting for our consideration. If there is anything else, Dan, that you might want to add to that.

MR. MCKIERNAN: Thank you. It’s my understanding that we created a subcommittee of a lobsterman or two from each state and an administrator from each state to sort of lay the cards on the table in terms of what data sets we all have that could be used for a possible limited entry scheme in the future and to present that to the LCMT as a group.

This is really a subcommittee within the LCMT so that everybody understands what the data limitations are. The existing limited entry schemes that go from



Area 2 all the way to Area 6, including the Outer Cape, are all based on verifiable landings and trip reports or various catch reports. But in the absence of that, in the state of Maine we're going to have to examine in sort of a common denominator fashion what data sets do we have as a group of three states and NMFS and what would be useful to accomplish that goal.

CHAIRMAN CULHANE: Okay, the next item on the agenda is the LMCT report for Area 3. Dan.

### LCMT 3 REPORT

MR. MCKIERNAN: I would like to defer to David Spencer.

MR. SPENCER: Thank you, Mr. Chairman. The Area 3 LCMT met via conference call April 30<sup>th</sup> as directed by the board at the last board meeting. We were requested to take a look at two specific items. One was a plan that was submitted to the board by Mark Palombo. The other was to discuss the proposals that are currently on the table awaiting implementation or inclusion in an addendum and determine if in fact those items would result in a shift in effort in Area 3.

We had a brief presentation of Mark Palombo's plan. We had discussion and our recommendation is not to go forward with that. Some of the reasons were there was not – we could not reach consensus that actually a shift of effort was occurring, and that was the basis for the submission of his plan. There was some discussion that really we don't see anymore lines drawn in the water. There was also some discussion that it really didn't accomplish anything there. It still would let effort move anywhere it wanted to in any of the stock units in Area 3.

The next item that we discussed was the possible shift in effort or the implications regarding our current proposals, which are a trap cap reduction from 2,200 to 2,000. We are also recommending that we revamp the conservation tax. The group determined that there was consensus that no shift in effort would occur if this proposal were implemented.

One of the other recommendations that the LCMT has actually is a request of NMFS for fishing effort data to give insight on how effort has shifted since Area 3 has implemented trap reductions. NOAA indicated that they would help supply that data but it would not be a full picture of the fishery since only

about 90 percent of the Area 3 fishermen report effort data.

We do support coming up with a baseline for Area 3; however, we think it's a good idea for every area. We're happy to provide that; we think it's meaningful, but we think that every other area should be held to the same standard. We'll provide that and we think it should be something every area should do. That was really the gist of our phone call.

As chairman of the LCMT, we still have two proposals; one dating back to August 2006; the other from last summer, that are waiting for inclusion into an addendum, and I would ask that the board move forward and create an addendum addressing those two items. Thank you.

CHAIRMAN CULHANE: Thank you, David. Any questions from the board? I have a member of the audience who has his hand up.

MR. ROY CAMPANALE: Roy Campanale. My brother and I own four offshore lobster boats in Point Judith, Rhode Island. At this time I'd like to present four specific options to be included into the transferable trap plan for public comment. I've also attached my comments made concerning the statement of purpose and its justification for Area 3 LCMT plan to lower the trap cap to 2,000. That I presented February 4<sup>th</sup>, 2008, to the Lobster Board at the last meeting.

First of the four specific options is, one, establish a baseline trap cap equivalent to your first historical trap allocation. The purpose, it would eliminate the concerns stated by the LCMT statement of purpose for lowering the trap cap once again, which stated given the competitive nature of the fishery, it is expected that once transferability is implemented all fishing entities will be forced to fish the highest number of traps in order to maintain competitive.

This will force many who have never fished a large allocation to build up to that number of traps. Concerns for the increased costs and overhead were also considered, as was consolidation in the fishery with only a certain number of traps allocated. Since the trend of the management process has been to fish fewer traps, the LCMT considered this a positive move towards the future.

Two, control trap increases; only allow vessels to increase their trap allocation a fixed number of percentage of the allocation on a yearly basis. Three, similar size vessels transfers; only allow vessels

under and over a certain size to be able to transfer trap allocation among each other; the size being somewhere around 45 feet.

And four, only allow traps that have been actively fishing in Area 3 since the date of the initial allocation be eligible for transfer. I do have the purpose under each one of these options. I don't want to take up anymore time of the board. I appreciate the time you gave me to speak. If there are any questions, I'd like to answer them.

CHAIRMAN CULHANE: Okay, thank you. Does anybody have any questions?

MR. ADLER: Thank you, Mr. Chairman. This isn't actually to Roy's thing. It was more to Mr. Spencer. He had mentioned something about wanting to start an addendum, and I didn't know whether this was something that he's asking us to do or what. I'd like to go back to that for a minute, to Dave Spencer's idea.

MR. SPENCER: Thank you, Mr. Chairman. This was the intent of Area 3 LCMT as far back as August 2006. We had a meeting to propose changes to our transferability plan, and we have been waiting for that item to be included in an addendum. We met last summer to change our conservation tax with the same goal in mind, to have it included in an addendum to be hopefully passed by this board and allow NMFS to start their rulemaking on it. The Area 3 LCMT assumes that's kind of the process; that we get together and make a recommendation to the board. If the board so chooses, then it would go out to an addendum and let the public have their say. The meetings were with the intent for having an addendum started. Thank you.

MR. ADLER: I remember that we excluded a section from Addendum XII that had been suggested. It had to do with the transferability sections, and it was excluded from that addendum at the time because until you get the transferring – maybe it was Addendum XIII – until we get the transfer glitches ironed out, that particular part was moot. Is this a different proposal for an addendum than just the transfer things?

MR. SPENCER: No, these are transferability items. Yes, anything that the Area 3 LCMT proposes is not going to be law for probably a couple of years. The reason we think it's timely to do this now is that we would like to get this out to the public, have a decision made on this; if it's acceptable, pass it on to NMFS to go through their rulemaking while they're

also considering rulemaking with transferability in general. So, anything that we do, we're forced to look two or three years down the road, so I think it is timely.

MR. ADLER: Well, Mr. Chairman, I didn't want to leave them out hanging, and I just wanted to hear if there is any – from the board is there any idea of how could we proceed or should we proceed? I don't know whether they want to get together and try to think up an addendum or what. I don't know how to proceed but I didn't want to leave them hanging; that's all.

MR. GIBSON: My question was similar to Bill's. I'm not aware that there's any action in the pipeline to address any of these things. Roy has asked for four options to go to public hearing. Area 3 has a number of concerns, but there is no impending action that I'm aware of unless this board authorizes one at some point.

CHAIRMAN CULHANE: And at this point it's up to the board whether we want to get something started today or do we want to chew on this and come back at some point in the future. It's up to the board how they want to proceed. George.

MR. LAPOINTE: Does it make sense – you know, we just delayed action on Addendum XII, and Bill mentioned that the transferability portions that David talked about are going to be affected by Addendum XII. It strikes me that we might want to have a discussion about options for an addendum at our August meeting.

We will have more clarity based on the subcommittee's work and approval of Addendum XII. We had the other issue about the vent size and there may be others. It would give us I think a more reasoned chance to make sure the addendum, if we do one, includes a suite of issues that both have been requested and are timely and may be affected by the subcommittee's work.

CHAIRMAN CULHANE: Bob Beal I think had something that he wanted to say procedurally. I'm sorry, it's on something else. Go ahead, Bill.

MR. ADLER: I think I agree with George. I think that probably the work that might be able to be done is maybe they could get together and come up some ideas to present, maybe together with Toni, some ideas that after we get through Addendum XII, we'd have something, as you say, to chew on and we'd have something to perhaps propose for a possible

addendum at that time. I think we're moving in that direction, but there needs to be a couple of things listed down on a piece of paper itemized of what needs to go into an addendum. Thank you.

MR. SPENCER: Thank you, Mr. Chairman. I just want to clarify. Are you asking us to come back with some ideas to present to the board? If that is the case, you have our ideas. In other words, we have met, we have discussed this, and I don't see those ideas changing necessarily. If you want to wait until the next board meeting, that's certainly at the pleasure of the board.

But, with the expectation that we're going to come back with something new, I don't think is realistic. We've actually, through the last three meetings in one form or another – and it's reflected in our notes – had discussion on a lot of these issues that have been holding this addendum up. I just wanted to be sure I knew what was being asked of the LCMT at this point.

CHAIRMAN CULHANE: Dave, I don't think anybody was really expecting you to come up with something new. We have your recommendations. I think it's just that nobody is really comfortable with picking up the ball and start running with it right at this meeting. Toni can work on this and the other issues and we can have something to consider in August. Bonnie, you had your hand up.

MS. BONNIE SPINAZOLLA: Thank you, Mr. Chairman. I just wanted to remind everyone that this is something, again, that the LCMT voted for in 2006. Way back in 2004 and '05 in Addendum IV the board approved a transferability plan for Area 3. At that time we had basically this same discussion with different trap numbers. I think it started at the New York City annual meeting.

We discussed different trap numbers and it was stalled, and we came back to the next meeting and the board voted on trap numbers, on a trap cap. We then came back and I believe we voted again for a lesser trap cap. This is finally a lesser trap cap. What that trap cap does is it allows more participants within the fishery rather than ending up with just a few people with a lot of traps, which is what the board had always said they didn't to happen.

So, realistically, we're not doing anything new. We're just looking at changing the trap numbers or altering the trap numbers that the board has already voted to approve. The other thing, too, is our conservation tax. We had a very confusing tax

process where anything under 1,800 traps or 1,800 and under I believe was taxed at 20 percent, I think, and anything over to the 2,600 range was taxed at 50 percent.

We all realized that was just impossible, virtually impossible to try and deal with. We're just trying to go with a more intelligent or simplified 20 percent tax across the board with a 10 percent for the operation, for the full operation. That's really all we're doing. It's not really a new concept and I just wanted to make that plain. Thank you.

CHAIRMAN CULHANE: Anything else from the board on this? Well, I think we'll take that suggestion of having Toni put something together for the next meeting for items to be included in a possible Addendum XIV. Bob would like to speak to us.

MR. ROBERT E. BEAL: Thank you, Mr. Chairman. As the Area 3 Conference Call that was just discussed was being set up, a couple of procedural questions were raised. To back up, the LCMTs primarily function as an advisory body to the states, and then the states bring their recommendations forward to the board. That's been working pretty well for all the other six LCMA's.

Area 3 is unique in that it's not adjacent to any of the states, and it's kind of an LCMT without a home in a sense in that Area 6 is pretty well facilitated by New York and Connecticut, and that's working well. Outer Cape obviously is Massachusetts and that's working well. The practice has been for the states to set up the meetings of the LCMTs and facilitate that process and work with those groups and provide staff support and technical advice at the state level.

Area 3 LCMT doesn't necessarily have that. The commission I think picked up the tab for the conference call, which isn't that big of a deal in this instance, but there may need to be some discussion down the road as to what is the appropriate state or group of states to facilitate the LCMT 3 and then how should their proposals be brought forward through the states and supporting that group in general.

It's just something for the board to think about. I'm not sure if we have to necessarily resolve it today. Staff can go back and think about it and do some work if that would help out at all. We just wanted to bring it to the board's attention for some thought.

## OTHER BUSINESS

CHAIRMAN CULHANE: Okay, thanks, Bob. The next part of the agenda is other business. Does the board have any direction of what Bob just brought up? Dan.

MR. MCKIERNAN: Question for Harry or Bob; which state has the most Area 3 active fishermen?

MR. MEARS: While we're looking for that information, the comment that was just made is certainly a valid and understood one. It was also one of the key comments made back in December of 1997 when Amendment III was approved. As I remember the essence of that discussion, it was that the National Marine Fisheries Service has federal waters in five of the six management areas, and there was very much an acknowledgement that a key component of this plan was to move forward to ultimately arrive at – the term used then was a seamless plan.

But the bottom line is, as I recall Phil Coates was at the meeting, I believe, he offered in the very beginning to kind of host the Area 3 LCMT. Andy Rosenberg, as regional administrator of the National Marine Fisheries Service, also indicated that we would participate in all of the area management meetings that had federal waters.

So, again, there is some history to the question at hand and some of the same concerns still linger. I just wanted to remind the group that we've been dealing with this situation for over ten years now. Okay, number of Area 3 vessels by state; the greatest number in Rhode Island, 39; followed by Massachusetts, 34.

MR. SPENCER: Thank you, Mr. Chairman. I just want to make it clear. I think the Area 3 LCMT is very functional. I don't want people to take away that we're dysfunctional. I think that's obvious; we haven't missed many addendums, so we do tend to get together. The thing that I will say is we get very good support from the state of Massachusetts and Rhode Island and participation both in commissioners and in technical people as well as NMFS. I'm happy how this works. The only time we have any issue, it seems, is when we do a telephone conference. I don't want this to seem like it's a problem any bigger than it is. However it works out is fine, but we are functional and hopefully we'll continue to be. Thank you.

MR. PETER HIMCHAK: Mr. Chairman, could I ask Harry or Bob to read the numbers of the other states, please, number of vessels?

MR. MEARS: That fish in Area 3, Pete? Okay, Delaware has one; Massachusetts, 34; Maine has six; New Hampshire, ten; New Jersey, 9; New York, 5; Rhode Island, 39; Virginia, two. Connecticut has two as well.

MR. ADLER: Just so we don't sit here looking at each other, Massachusetts has sort of been hosting the thing, and Dave says there is really not a problem. I just think that you should continue like that, and certainly Rhode Island should be involved, and maybe they could get NMFS, Rhode Island and Massachusetts all to sponsor the Area 3 operation or whatever. I think we could leave at that for now, and I think that will take care of it.

CHAIRMAN CULHANE: I think that sounds reasonable. Let's move on to other business now. Dennis.

REPRESENTATIVE ABBOTT: Yes, thank you. I'd like just to make an announcement that we're having a lunchtime meeting for AOC, Advisory Oversight Committee. We're going to be looking at selecting two non-traditional to shad and river herring. I remind those that were reminded to meet.

The last comment I would make is I'd like to say that the agenda today, we stuck with it almost minute by minute through all 13 agenda items, so I think staff should be congratulated and I think the Chair should be congratulated for keeping the board on track all morning. It was a very fine job, Brian. Thank you.

CHAIRMAN CULHANE: Thank you, Dennis. Any other business? Dan.

MR. MCKIERNAN: Just briefly, it has come to my attention there was a discussion at the advisory panel, I believe, about non-trap vessels landing lobsters relative to what areas they were required to choose on their permit and whether one state has higher standards than another. In Massachusetts we require our non-trap fishermen to actually choose an area. Would it be possible for Toni or someone to write a memo to the board about what issue came up just to flesh out the issue a little bit? It's not for discussion today.

## **ADJOURN**

CHAIRMAN CULHANE: Toni says she can do that. No other business, do I have a motion to adjourn? So moved. Seeing no objection, this meeting is adjourned.

(Whereupon, the meeting was adjourned at 12:25  
o'clock p.m., May 5, 2008.)