

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

**Crown Plaza Old Town
Alexandria, Virginia
February 2, 2009**

Approved May 2009

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Adjourn 10

INDEX OF MOTIONS

1. **Approval of Agenda by consent (Page 1).**
2. **Approval of Proceedings of October 21, 2008 by Consent (Page 1).**
3. **Move to approve draft Addendum 12 to Amendment 3 of the interstate fishery management plan for American lobster as a final addendum with selection of the following options:**
 - **Approve Option B (4.2.2) of the “Most Restrictive Rule” that would conform to the current NOAA Fisheries regulation; and**
 - **Approve Option C (4.3.3) of the “Effects of permit & Trap Allocation Transferability on LCMA’s Without History-based Allocations (Currently LCMA 1) that would prevent the holder of any permit holder who transferred trap allocation from fishing in LCMA 1. All other sections shall be enacted as a final Addendum as written.**

Motion by Dan McKienran; second by Mark Gibson (Page 2). Motion carried (Page 6).
4. **Move to approve Addendum XIV for public comment (Page 7).** Motion by George Lapointe; second by James Gilmore. Motion passes (9 in favor and 0 opposed (Page 7).
5. **Move to approve 2008 Fishery Management Plan Review (Page 8).** Motion by George Lapointe; second by Doug Grout (Page 8).
6. **Move to remove, “Utilize the CKWM to evaluate stock status projections” from the term of reference (Page 8).** Motion by George Lapointe; second by Doug Grout (Page 9).

ATTENDANCE

Board Members

George Lapointe, ME (AA)
Terry Stockwell, ME, Adm. Proxy
Sen. Dennis Damon, ME (LA)
Pat White, ME (GA)
G. Ritchie White, NH (GA)
Douglas Grout, NH (AA)
Rep. Dennis Abbott, NH (LA)
William Adler, MA (GA)
Dan McKiernan, MA, proxy for P. Diodati (AA)
Vito Calomo, MA, proxy for Rep. Verga (LA)
Mark Gibson, RI (AA)
Kelly Mahoney, RI, proxy for Sen. Sosnowski (LA)
David Simpson, CT (AA)
Dr. Lance Stewart, CT (GA)

James Gilmore, NY (AA)
Pat Augustine, NY (GA)
Brian Culhane, NY Chair/Proxy for Sen. Johnson (LA)
Peter Himchak, NJ DFW, proxy for D. Chanda (AA)
Tom Fote, NJ (GA)
Gilbert Ewing, NJ, proxy for Asm. Fisher (LA)
Roy Miller, DE, proxy for P. Emory (AA)
Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Russell Dize, MD, proxy for Sen. Colburn (LA)
Ernest Bowden, VA, proxy for Del. Lewis (LA)
Mike Johnson, NC, proxy for Rep. Wainwright (LA)
Harry Mears, NMFS

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

Ex-Officio Members

Joe Fessenden, Law Enforcement Committee

Bob Baines, Advisory Panel

Staff

Vince O'Shea
Robert Beal

Toni Kerns
Brad Spear

Guests

David Spencer, AOLA
Bonnie Spinnazzola, AOLA
Janice Plante, Commercial Fisheries News
Hank Soule, Newington, NH
Bill Sharp, FWC

John Gerinan, LISLA
Jerr Marston, NH F&G
Peter Burns, NMFS
Chip Lynch, NOAA
Bob Ross, NMFS - NE

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, February 2, 2009, and was called order at 2:50 o'clock p.m. by Chairman Culhane.

CALL TO ORDER

CHAIRMAN BRIAN CULHANE: I would like to welcome everybody to the American Lobster Management Board Meeting. The first order of business is to approve the agenda. Does anybody have any changes they would like to make to the agenda?

MR. PATTEN D. WHITE: Mr. Chairman, only if there is time, I would just like to report on a couple of conferences that I hosted in November and January, but if there is not time I'll do it later.

CHAIRMAN CULHANE: Okay, we can do that under other business.

MR. HARRY MEARS: Mr. Chairman, I would also like to make a brief presentation or an update on federal rulemaking for lobster.

CHAIRMAN CULHANE: Anyone else? Dave Simpson.

MR. DAVID SIMPSON: I will have an update on the v-notch program in LMA 6.

APPROVAL OF AGENDA

CHAIRMAN CULHANE: Okay, we will add those things under other business. Seeing no further changes, we will consider the agenda approved.

APPROVAL OF PROCEEDINGS

CHAIRMAN CULHANE: The next order of business is the approval of the proceedings from the October 21st meeting. The proceedings are approved. Now we have a public comment period. We have one person signed in the sign-in sheet. John, would you like to make a public comment.

PUBLIC COMMENT

MR. JOHN GERMAN: Mr. Chairman, my name is John German, an Area 6 fisherman; also, president of Long Island Sound Lobstermen's Association. I would like to make a comment on the projected landings or whatever landings were made in the year of 2008. I am sure up and down the coast the

landings will show a decline, especially in the fall months, and in years to come that will show up on the chart.

A lot of you probably won't be here, but somebody else will be here looking at those graphs, and they will reflect a decline. The decline will be mostly from the economic situation that faced the lobster industry this fall. A lot of guys didn't fish or seriously cut back on their effort because of the price, and the overhead did not justify the return financially. I know Magnuson deals with the social aspect of the all the fisheries, and I have seen that kind of overlooked many times.

I don't really know if it deals with the economic part of it so far as price. I don't know how that would play into it; it deals with the economics of coastal communities. I just wanted to say that lobster stock that was not caught is still there on the bottom. It is not a decline in the product; it's just the economics of catching them. The effort did not justify it; so when we see that decline in future years, in the year 2008, I would like some kind of a note to be made about the price structure that went on in the industry for this year. That's all I want to say. Thank you very much.

CHAIRMAN CULHANE: Thank you, John. The next order of business is Draft Addendum XII.

REVIEW OF DRAFT ADDENDUM XII

MS. TONI KERNS: At the last board meeting the board made some changes to Draft Addendum XII that was significantly different than how the draft had originally gone out for public comment, so we released the document for an additional 30 days for public comment. To quickly review what is in this document that we will be considering for final action today, and then I will go through those public comments.

This addendum looks at the Trap Transfer Programs for the lobster industry. Some of the basic principles that followed for initial qualification is that the history will follow the federal permit with the exception for the dual permit holder. That individual could surrender their federal permit and then the history would be transferred to the state permit.

For trap migration, for qualification purposes as well as for trap transfer purposes, individuals could only transfer with another individual that has a state permit holder – they could only transfer with another state permit holder. If you are a federal permit holder, they would only be able to transfer with another federal permit holder.

For dual permit holders, they would not be able to transfer traps to an individual that had a state-only license. They would have to transfer with another dual individual permit holder or a federal-only permit holder. Federal-only permit holders would only be allowed to transfer with other federal-only permit holders. They would not be able to transfer with any state-only permit holders.

For the most restrictive rule, the document went out for public comment with the recommendation that came from the Trap Transfer Committee the preferred Option B, the current rule under the National Marine Fisheries Service. There was also the Option A; that is, the commission's current regulation which most individuals do not follow because most states fall under a memorandum of understanding with the federal government, which states that we have – when giving traps to federal permit holders, that they have to follow the federal rule, which is the more restrictive of the two measures.

The document stated that we would build a database to track those transfers. After the October Lobster Board Meeting, the Atlantic Coastal Cooperative Fishery Program awarded the commission funding for the initial building of such database. We received about \$156,000, and we will begin to build Lobster Database if this addendum is approved for final action this summer. Then we would need some additional funding once we implement the database to have a staff person that would be able to help states use that database and troubleshoot any problems that we would have with the database for probably the first two years.

The document also discusses trap taxes for transfers. The document has taxes on partial businesses and sales as well as full business sales. Those conservation taxes would not go into place until all agencies and jurisdictions have allocated the traps and put transfer programs in place. The document states that traps cannot be leased. They would just be purchased.

We would only allow transfers within state currently, so state-only permit holders are the only individuals that would be able to transfer until all states and jurisdictions have allocated and put programs into place. For those individuals that have multiple management areas on their licenses, only single management areas could be transferred; so if you have a license you would have to decide what specific area that trap was going to be able to fished in and then that trap would not be able to be fished in

multiple area in the future. You have to decide a single management area.

Then there was an option that looked at Area 1. There were concerns because Area 1 is still an open active access fishing area; that with trap transfers coming into place that there would be additional effort put into Area 1, so the document went out with a preferred option that would no longer allow traps to be fished in Area 1 once a transfer had been made by an individual.

All states would have to report with their compliance reports on the number of traps that were transferred throughout the year as well as states would have to notify their permit holders what type of permit classification they're given, whether it is a state-only, a dual or a federal-only. Most states currently do this already.

When we went out for public for the second time, only two comments were received. One of the comments only looked at the most restrictive rule, and that commenter was in favor of Option A, which is the commission's current rule but not the rule that most fishermen actually fish under. The other comment was complimenting the commission on putting out a preferred option for the National Marine Fisheries Service's most restrictive rule.

That commenter also indicated that the lobster database is very important for trap transferability to move forward, and they also commended the collaborative efforts that all the jurisdictions are moving forward with in developing this program and would like to reiterate that any inconsistencies between states will make it more difficult for the National Marine Fisheries Service to implement any trap transfer programs in the future. That is my brief rundown of this document. Since we have heard it several times, I think everyone is very familiar with the document. Does anyone have any questions?

CHAIRMAN CULHANE: No questions? Anybody have a motion? Dan.

MR. DAN McKIERNAN: I would like to make a motion to approve the addendum by identifying two of the preferred options and then enact the addendum in its entirety. My motion would read like this: To approve Addendum XII to Amendment 3 of the Interstate Fishery Management Plan for American lobster as a final addendum with selection of the following options: Approve Option B, 4.2.2 of the most restrictive rule that would conform to the current NOAA Fisheries regulation; and approve

Option C, 4.4.3 of the effects of permanent trap allocation transferability on LCMAs without history-based allocations; currently LCMA 1. That would prevent the holder of any permit holder who transfer trap allocation from fishing in LCMA 1. All other sections shall be enacted as a final addendum as written.

CHAIRMAN CULHANE: Mark Gibson seconds. Discussion on the motion. Dan

MR. McKIERNAN: I just want to remind the board that seven years ago ASMFC held a workshop on these kinds of ITT programs, which we have moved forward with in various capacities and various degrees and sort of admit that we failed to calculate the complexity of the multi-jurisdictional permitting problems. We have been working really with the other states and also with NMFS, Harry's group, Bob Ross and Peter Burns and Patience to try to move beyond the problems.

There are aspects of this addendum that are unsettling and disappointing I think to everybody. Nobody got what they wanted, but I think it is crucial to approve the addendum today because the analogy I would use is we're in the plane but we're stuck on the runway and it's seems like we have been on the runway for about 12 hours, and it is critical to take off soon here so that the relief that is expected on the part of the fishermen who were granted inadequate trap allocation for their business plans can finally get the relief through the transfers that are needed, and so I would urge the board to approve and understand that it is perfect but it is really well written, I have to admit.

Toni has massaged this thing. There have been so many issues that have been raised and tried to be clarified, and to the degree that it is still confusing, believe me, it is because multi-jurisdictional permitting is a very confusing issue. We're really trying very hard to anticipate problems that come up when you try to enact and then facilitate and make transactions.

The fact that there was very little negative comment on these I think is a reflection that the industry is so frustrated that they need this to go forward; and even though it is not perfect, it is the best we can do and I think it is crucial that it be approved.

MR. WILLIAM A. ADLER: I, too, want the transferability or the addendum to go through, but I do have some problems here. First of all, the commission's version, which is not what is being

chosen here, the commission's version of the most restrictive is what we decided upon before and now we're being help up apparently by the federal government on this.

That was the one to try to put it in one way. Let's say you had an 800-trap limit in the Area 2 and you happened to have a 300-trap limit in allocation in Area 3. The logical thing is you can only fish 300, no more, in Area 3 and 500, making a total of eight, 500 and not 800, in Area 2. That's the logical thing but what happens here is if you had that scenario, you're restricted to 300 in both places, and I have a problem with that.

The second thing is the idea with the Area 1 situation. If someone in Area 1 happens to have – well, has an 800-trap limit because there is no historical participation in Area 1, but he happened to have qualified for some traps outside of there in Area 3; let's say 300. Now he has always fished in Area 1, but he did qualify for those.

So, let's say he says, "Well, I'm just going to fish in Area 1; forget the outside; I'll just sell these off to some offshore person and just fish." He won't be able to fish at all in Area 1, and somehow I have a problem with that. Those are my problems with this is taking the federal version of most restrictive, and also I have a problem with that scenario for Area 1. I do want a transfer plan to go through because I know they need it, but I am just hung up on that, so I don't know that I'll support this motion for those reasons. Thank you.

CHAIRMAN CULHANE: Thank you, Bill. Anyone else?

MR. MEARS: Mr. Chairman, I will be abstaining from this vote primarily because of the far-reaching implications on the concluding section, recommendations to the Secretary that will continue the path with our own federal rulemaking. But I do want to voice agreement with some of the sentiments and perspectives that Dan McKiernan laid out earlier.

The whole issue of inter-transferability, Dan made me remember, does go back I believe to 2002. At that time we kind of knew there were implications on the horizon relative to interjurisdictional collaboration that would need to occur, and we moved forward with Addendum IV. That was eight addenda ago when we started talking about inter-transferability back in 2003 when that addendum was approved.

That in itself led to what we're talking about here today with Addendum XII. I believe it serves as a barometer of the complexities that we face as we move forward toward uniform implementation, but it is also a testament to the type of dialogue that needed to occur within that eight-year period.

I agree with Dan; no one is completely happy with this. There is a little bit of give and take, I think, for each jurisdiction. However, I think it is closer to the potential now for uniform implementation at a point where we have never been before. The point that continues to concern me most as we move forward is the importance that no one person can yet wrap their arms around in terms of the centralized database.

I think this board recognized the potential importance of that database with the support that eventually led to the ACCSP Project that Toni referred to earlier. I think that was a monumental undertaking or monumental achievement in terms of the potential success of the ITT Program. What does concern me is beyond Year Two, after the pilot stage is completed.

As enthusiastic as I am that we have minimized the gap or the wide differences that once existed, this is the one area that to me is crucial as we move ahead. I think in looking at federal lobster management in hindsight five years for now, if this goes forward – and I have reason to believe it looks like it is going to – is that is going to be one of the most far-reaching management accomplishments for lobster management, at least from a socio-economic perspective.

We have addressed a lot of what could be type implications as we move forward, one of which is that we're talking about here today, the migration – the unintended migration of fishing trap effort to areas where it was once believed would not be impacted. Although we have already dealt with historical participation in Area 3, 4 and 5, we're now looking at the focal point of historical lobster effort.

Once again, I would like to conclude by saying that I think we have come a long way. I think we're in a good place and I am pleased to see the collaboration that has taken place with all parties to make this happen, but I do express a caution that it ain't over yet; that we still need to further look at what will arise before us with now the well-understood inconsistencies between state implication of the ITT as well as what the National Marine Fisheries Service may eventually propose and how all of that fits in – the integrity of all of that fits in to the need for a

centralized database. I would hope that would stay on our radar screen as we move forward with this type of management regime for American lobster. Thank you.

MR. MARK GIBSON: Mr. Chairman, I would ask the board to vote for this action for the reason that both Dan and Harry have spoken well to, and I am not going to belabor those. On the issue of most restrictive rule, we lost that one and that is water under the bridge. I would have preferred it in Rhode Island and the industry would have preferred the more new version that this commission tried to go forward with, but we simply ran into a problem with that.

Rhode Island tried to apply that and found out that we had to back out of it and it was jeopardizing our tag issuance MOU. I don't anybody here wants to have the Service issuing trap tags to their federal permit holders. We want to retain that MOU standing and be able to handle all of the permit holders in the respective states regardless of what their federal or state permit is, so we lost that one and it is water under bridge. We have got move on.

MR. TOM FOTE: In looking this over it is pretty data intensive, and it means a lot of data has to be collected. I am back new in the lobster, but I'm looking at funding and where is the funding going to come to do all this work? Are we going to start off with a one-year grant and two years down the road we won't have any money to keep this current? I mean, I asked the simple question of how many pots does New Jersey have out there, and we're not sure what we have out there right now.

We know what we're authorized to have out there but we don't know exactly the numbers we're fishing at, so it is a lot more complicated. You know, I'm just trying to figure out do we have a steady source of funding to basically keep this going of what you basically put in place or is it going to fall by the wayside?

MS. KERNS: I would just like to remind the board that this trap transfer program is only initiated in your rulemaking if you put together – if the management areas in your state put together a trap transfer program, so you don't have to utilize this until you want to initiate a trap transfer program for your area.

The additional funding that we will need is just for two years and then to have some support staff to help states begin to utilize the database, and then that funding will no longer be necessary because states

will be able to manage the database on their own, similar to reporting landings, et cetera.

MR. ADLER: Mr. Chairman, I wanted to ask another question, and it might eventually go to Harry. If this plan is adopted – and the one section in here that is good is the fact that if someone from Area 3 or Area 2 or one of those big places that has a trap allocation sells his allocation in that area, can he then go to the federal government once a year and have his federal permit changed to read Area 1?

Now, remember, that is different from my discussion before. My discussion before was an Area 1 fisherman with an Area 3 allocation; that if he sold, he would be out where he has always fished, but this is a different thing. This is picture Area 2 or Area 3 sells off his allocation there, runs into the federal government at renewal time and changes his federal area, which apparently he still can do once a year, changes it to Area 1 and then move in. Mr. Chairman, I wanted to ask Harry if that is still possible under the federal thing even if this passes.

MR. MEARS: The short answer is yes that can happen today. The longer answer is on January 5th we published an advance notice of proposed rulemaking relative to a control date that would make that type of decision potentially either difficult or not possible at all.

Essentially the notice of a potential control date, which would be February 2nd of 2009, indicated that there may be potential rulemaking, not prejudging what that rulemaking would be, but it did indicate that the type of decision or business decision that is now possible that Bill alluded to may no longer be possible as well as federal lobster permit holders that are in the non-trap fisheries switching over to the trap fishery.

So it was a clear notice to the public for their comments in terms of that type of additional regulatory restriction being placed on current permit holders. So, Bill, yes, today it is possible, but in the future it could change in terms of, number one, whether or not this addendum is voted in today and I'm assuming there will in fact be recommendations, should it be successful, to be forwarded to the Secretary for federal consideration, at which time there will be a whole separate opportunity for public comments on that specific question. Thank you.

MR. McKIERNAN: Just a comment, I know that Area 3 LCMT has worked hard to reduce traps in Area 3. Under the scenario that Bill describes, it

would be possible for these fishermen who have Area 3 allocations but aren't fishing them because they might be too small; when they transfer those allocations, you would have a net gain of traps in Area 3.

That is my concern is that under the current standards and under the current NMFS rules, which are now nine years old, fishermen who have these minority allocations haven't been able to fish them or most have opted not to fish them because NMFS has held them to the so-called most restrictive rule, so there is this population of traps in the system that are essentially unfished, and I am thinking about the Area 3 trap reduction goals being somewhat compromised if these traps that are unfished now get thrown into the pool of transferable traps.

Not to suggest that they wouldn't be transferred under this scenario even if adopted as I recommended, but I think fishermen would pause before they transfer those traps because the result of that transfer would be that they wouldn't be able to fish in Area 1, which is presumably where they're fishing now. So, there are, you know, some number; maybe it is a dozen, maybe it is 20 guys who have some what I call latent allocation of Area 3 traps and they are not fishing them. Instead they're fishing in the nearshore zone and those would wind up in Area 3.

CHAIRMAN CULHANE: Any other discussion on this? Pete, go ahead.

MR. PETER HIMCHAK: Mr. Chairman, I don't have a question on the motion, per se. I had a question for Toni on the timing of the database and the requirements of the state and what we would need to furnish to populate the database initially. Essentially you're going to get the ACCSP money maybe in May or June of 2009, and what would you require the states to submit to you? Would we have to give you or the contractor or whoever is doing this a list of all our fishermen, their pot allocations by area; would we have to supply that with the database? That's my question.

MS. KERNS: Pete, we haven't decided on all of the pieces of information that we will need to populate the database. That's part of building the database program. We have had initial discussions on different items that we would need to populate, so I can't give you the final answer. I know that originally when we discussed this that we were looking for all permit holders and their current allocations. Some of that information will be

supplied for your state, though, by the National Marine Fisheries Service since many of your fishermen are federal permit holders.

CHAIRMAN CULHANE: Any other discussion on the motion? I will take comments from the audience on this motion.

MR. DAVID SPENCER: Mr. Chairman, David Spencer, and I am speaking as the industry representative on the Transferability Committee. I would urge the board to adopt this addendum. It has been a long time coming. I think Dan summed it up correctly. Nobody got everything that they wanted.

They were frustrations I am sure on the federal side, the state side and the industry side, but it probably means it is a good compromise. I think it is a very reasonable and realistic foundation from which to build on. I do agree with Harry; this is going to have huge implications in the future of lobster management.

Having said that, I think even at the very end of the discussions that the Transferability Committee had and this document getting to the board, there have been some issues identified that may need further discussion, so I would ask the board to keep this group together, keep them talking because I see this as fluid. It is a very complicated issue and I just hope that we can continue to discuss, continue to refine this and really make this as good a document as we can. Thank you.

CHAIRMAN CULHANE: Anybody else from the audience? Then it is back to board. With no further discussion, we're ready for a vote. Would the states like 30 seconds to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN CULHANE: Okay, are we ready to vote? All in favor please raise their right hand; all opposed, same sign; any abstentions; any null votes. The motion passes. On to the next order of business, Addendum XIV.

REVIEW OF DRAFT ADDENDUM XIV

MS. KERNS: I am going to go through Draft Addendum XIV. This is for the board to consider for approval for public comment. If these items seem slightly familiar to you, it is because they were brought forward to the board last February as part of an addendum that also included some measures for Outer Cape Cod, and the board decided to take them

out of that addendum so they are going to be back before you.

This addendum document timeline would be considered for approval at this meeting. We would have public comment February through April time period, and then the board would review that comment at the May meeting and be considered for final action. The purpose of this document is to amend the current Lobster Management Area 3 Transfer Program. The LCMT brought forward these changes to the board as a proposal to be considered.

The two issues that are being considered for changes are the conservation tax and the trap cap. The conservation tax; there is concern that because it is a high tax it could deter transfers from occurring, which is one of the main concerns that the industry has, as well as that there is a current system as the two-tier system that has caused some confusion amongst the industry.

For the trap cap, there is concern that once transferability begins, that the permit holders will seek to maximize their trap allocations through transfers and that the end result, after many years down the line, could be that would be fewer fishermen involved in the fishery, and a lowering of the trap cap would result in more participants if the expanded trend did occur.

The trap cap also is a concern because of the variable cost to run a lobster business is increasing with the increase in fuel and rope and bait, that capping the maximum number of trap levels at a lower level could promote some economic efficiency and thus we would be meeting the goals of the plan that maintain the existing social and cultural features of the industry as well as promoting economic efficiency in harvesting and the use of the lobster resource.

The options that are in the document is to first look at the conservation tax. The first option is status quo. If an individual transfers up to 1,800 traps, the conservation tax is 10 percent. If an individual transfers more than 1,800 traps, the conservation tax is 50 percent. The proposed change to that would be Option B, which has a 20 percent tax on partial transfers; and then if an individual sells the full business, then it would be a 10 percent conservation tax.

The second issue is the trap cap. Under the current transfer program, there is a trap cap of 2,200 traps. Option B would be lowering that trap cap by 200 and having 2,000 traps. This document would

recommend to the National Marine Fisheries Service that all measures be adopted to be consistent with the plan. The plan review team would like to note that all the issues in this document would be for federal waters, and none of the changes would be in state waters, but for federal waters. Any questions?

MR. ADLER: Toni, Option B of 4.1.2, is says, "No individual business with an allocation of less than 2,000 traps could build their total traps above 2,000 traps." I didn't see where everybody's trap limit is dropping to 2,000.

MS. KERNS: No, it is only when an individual transfers traps, so you can't build up to more than 2,000. This is only if an individual transfers traps. It doesn't make a trap cap for the area. It is only when someone transfers.

MR. ADLER: Okay, so you're not lowering the overall trap cap to 2,000; you're only lowering it for people that are under 2,000 and try to buy up. They can't buy up 2,200.

MS. KERNS: There isn't anybody that has more than 2,000 traps. I believe no one has more than 1,900 and change. David Spencer could probably tell you exactly what that number is if you needed that, but no one has more than 2,000 traps currently.

MR. ADLER: Okay, I don't have a problem with this. I just didn't understand the wording there. Thank you.

CHAIRMAN CULHANE: Any other questions? George.

MR. GEORGE D. LAPOINTE: Mr. Chairman, I am going to make a motion that we approve Addendum XIV for public hearing.

CHAIRMAN CULHANE: I will except that motion; seconded by Jim Gilmore. Discussion on the motion? No discussion from the board; I see a hand up in the back. Dave, would you like to come to the microphone.

MR. SPENCER: Mr. Chairman, David Spencer, Area 3 LCMT. I would just urge the board to approve this addendum. Some of the items in here are over two years' old. This actually has been debated at the last three or four maybe five board meetings, and I think it is time to go out to the public and get their input. I would urge that you approve. Thank you.

CHAIRMAN CULHANE: Thank you, Dave. Anybody else from the audience? It is back to the board. Without seeing any further discussion, are we ready to bring this up for a vote? Do we need a caucus? Okay, all in favor of Addendum XIV, please raise your right hand; all opposed, same sign; abstentions; null vote. The motion carried nine to zero. George.

MR. LAPOINTE: A bit of nitpicking. Toni mentioned increased fuel costs and they aren't increased right now, so I would just talk about increased operating costs, because some people will say that there are no increased fuel costs and so it might be less of a reason.

MS. KERNS: Can I see a raise of hands from states that think they may want to have hearings? Thank you.

CHAIRMAN CULHANE: Okay, the next item on the agenda is approval of the 2008 FMP Review. Toni.

2008 FMP REVIEW

MS. KERNS: At the last board meeting we went through the FMP Review, but I had stated that the plan review team had not had the opportunity to go through the document. We did meet via conference call and the plan review team made just a couple of changes to the recommendations, as well as we added some additional tables to the document so that document is currently being passed out to you.

The tables that we added were landings by management area, which hopefully will help give the board a better look at the lobster fishery. Those landings are estimated by proportioning parts of the statistical area into specific areas, so they are not exact but it is our best estimate of how to proportion those landings out.

The recommendations that the committee made were concerning the socio-economic assessment. They recommended that with the release of the new assessment and the possibility of some new reference points there may be a need for changes to the management program for lobster, and the PRT recommends that ASMFC's Socio-Economic Committee evaluate the socio-economic impacts of the stock assessment results, as well as the recommendations.

They also recommended that the development of the trap transfer program will also have significant

impacts on the lobster fishery, and so an economic study should also be conducted to examine those impacts. The committee also recommended to continue the cooperative work between the states and the federal jurisdictions to achieve the goals of the FMP.

They also made a recommendation on regional data collection. With the decline in resources for data collection programs and the need for the development of consistent techniques to monitor the distribution and the abundance of lobster, the plan review team recommended that regional data collection programs be implemented. This initiative could streamline state and regional programs and provide consistent information for assessment use.

Those declines in resources affect a state's ability to do their trawl surveys, their ventless trap surveys, sea sampling and port sampling, and so there is a large concern that with the decline in those resources that there will be less biological information for use in the stock assessment. Without that information, the stock assessments can't occur. With that, that is all the updates to the FMP.

CHAIRMAN CULHANE: Any questions? We need a motion to approve this. Motion by George Lapointe; seconded by Doug Grout. Any discussion on the motion? The motion is move to approve the 2008 FMP Review. All in favor raise their right hand; any opposed, like sign; abstentions; null votes. The motion passes. The next order of business is the stock assessment update.

STOCK ASSESSMENT UPDATE

MS. KERNS: The Stock Assessment Committee has been working very diligently to get the document completed. They are turning in all of their sections today, as a matter of fact. The peer review will be March 17th through the 20th at the Boston Seaport Hotel. The information is on our website.

The Stock Assessment Committee would like the board to consider taking away part of a term of reference. That term of reference is currently reads "to update the current fishing mortality and abundance biological reference points; investigate additional biological reference points; and then characterize the uncertainty in stock status as well as utilize the current model to evaluate the stock status projections.

The model is having some difficulty in looking at projections. It keeps producing results that are not

possible, and so the committee needs additional time to work out those problems with the model. Therefore, they are recommending that they utilize the current model to evaluate the stock status projections be removed from this portion of the term of reference in order for them to continue to work out this kinks in the model because they will not be ready for peer review.

MR. LAPOINTE: I mean, it is easy for us to say what are the implications for the stock assessment and knowing how hard it is to get folks together; if we take that out my sense is it wouldn't happen for a long time. We all care deeply, I know, but it might be one of those kinds of curiosity portions of the assessment as opposed to something more substantive, but that is my question.

MS. KERNS: The committee members, Yung Chen, who has been instrumental in building this model, as well as Larry Jacobson, who has been instrumental in making the interface of this model a little bit more user friendly, and Genny Nesslage on the commission staff, who has been a part of all of that has begun to exchange e-mails about in the future getting together to work out some of these issues, so it is something that is currently on members of the stock assessment committee's minds to fix and move forward with. Whether or not those projections would be ready at the end of this summer or the end of the year, I don't want to promise because I don't know what is wrong with the model and why it won't produce realistic results.

MR. LAPOINTE: With the thought that most of our – you know, if we look at models in the terminal year and how undependable it is moving forward makes me even more concerned, so I will make a motion to remove this term of reference.

CHAIRMAN CULHANE: Toni clarified that as part of the term of reference.

MR. LAPOINTE: The portion of the term of reference that states utilize the CKWM – can't read it – to evaluate stock status projections.

CHAIRMAN CULHANE: We'll get that up on the board and does anybody want to second that? Doug Grout seconds. Any further discussion? Mark.

MR. GIBSON: The problem we're having is just in the projection exercise and not in assessing the status of the stock as of the terminal year of data that is available?

MS. KERNS: Yes, that is my understanding.

(Whereupon, a caucus was held.)

MR. GIBSON: And they don't have concerns at this point that whatever is causing the projection is a problem embedded in assessing the resource as of a certain time certain, and I am having trouble understanding if one part doesn't work why we think the other part works.

MR. SIMPSON: While we're caucusing, can we just get the CKWM spelled out?

MS. KERNS: I can't answer that portion of your question, but I can get back to you on that.

CHAIRMAN CULHANE: All right, are ready? All in favor please raise their right hand; all opposed, same sign; abstentions; null votes. The motion passes. Okay, now we're at other business. The first item under other business was Pat White.

OTHER BUSINESS

REPORT FROM THE GULF OF MAINE LOBSTER FOUNDATION CONFERENCES

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, I was wondering if maybe we had a read from the stock assessment committee about the utility of the advice that they're going to be able to provide the board by removing this. In other words, would this have any significant negative impact on the advice they're eventually going to give the board regarding the stock?

MR. P. WHITE: Mr. Chairman, in the interest of time I would just like to tell the board that the Gulf of Maine Lobster Foundation has hosted two conferences; one in November and one January. We had participants from Maine, New Hampshire, Massachusetts, Rhode Island, Florida and Canada.

MS. KERNS: Not that I'm aware of. The committee is going to discuss this with the peer reviewers in terms of seeking advice on what they may or may not know could be going on with the model, and so removing it from the term of reference will just sort of put a safety net on so that if it isn't completed, that that term of reference isn't failed because the model couldn't do it, but it's that they – they still plan on saying we are trying to do these and try to seek advice from the peer reviewers on that.

Each participant expressed their top three concerns about the industry. We didn't have any industry there at the first meeting. We reduced the group by half and added industry at the second. I think you will find it an interesting report and I will get it to you later on better summarized, but I just want people to be aware of what we are doing.

MR. LAPOINTE: Mark's question I think is more important to this assessment than the projections, and so I don't know exactly how we do it, but we need to – and we can do it through Toni or staff – relay to the folks doing the assessment that if one half isn't working why should we assume the other half is working. When the results come out, we're going to have to stand by them, and so we want to know the strength of the results.

CHAIRMAN CULHANE: Okay, thank you, Pat. The next person I had on the list was Harry Mears.

UPDATE ON FEDERAL RULEMAKING FOR LOBSTER

MR. PATRICK A. CAMPFIELD: Mr. Chairman, to answer Mr. Gibson's question, they are mutually exclusive. The stock projections are not impacted by the modeling analysis. They can conduct the stock assessment and it is a separate exercise from the stock projections. It's simply I think an additional task that was included in the TORs.

MR. MEARS: Mr. Chairman, in follow up to earlier comments about the control date, this board made a recommendation at the annual meeting in Rehoboth Beach that was followed up by a letter from the commission urging the National Marine Fisheries Service to essentially publish notice of a potential control date to our lobster constituents. We did that.

CHAIRMAN CULHANE: Any further discussion on this? If not, I think it is ready for a vote. The motion is move to remove "utilize the CKWM to evaluate stock status projections from the term of reference". Motion by Mr. Lapointe; seconded by Doug Grout. Okay, 30 seconds to caucus.

It was published on January 5th that set a potential January 2nd, 2009, control date. The public comment period closes today. The public comments we receive will certainly dovetail with the public comments that we receive here at the commission level relative to Addendum XV. The bottom line is we will receive the public comments and then respond accordingly relative to further recommendations from the commission for rulemaking.

On another topic of federal regulatory notices, on October 6th we issued a proposed rule relative to mandatory dealer reporting in the lobster fishery as well as changes to the maximum carapace length in the several lobster conservation management areas as well as modifying the federal definition of v-notching. That public comment period ended on November 20th, and we're continuing to analyze the public comments we received. Our intent is to move forward with an appropriate final rule in accordance with the commission's timeline of July 1, 2009, for implementation. Thank you.

CHAIRMAN CULHANE: Thank you, Harry. The next person I had under other business was Dave Simpson.

UPDATE OF V-NOTCH PROGRAM IN LMA6

MR. SIMPSON: Mr. Chairman, I wanted to just update the board on the v-notch program in LMA 6. As you recall, at the end of July of 2008 we reached the Year One target. It was a two-year program. In Year One we v-notched over 93,000 lobsters; 59,000 legal equivalence, which was 102.6 percent of the Year One target.

We began Year Two v-notching in November and will continue to v-notch until the end of March when we anticipate that funding will be exhausted. At the present we do not anticipate reaching 90 percent of the Year Two target. Therefore, in order to remain in compliance with Addendum XI New York and Connecticut, the states that share LMA 6, will need to implement a 3-3/8 minimum carapace length on January 1, 2010.

MR. JAMES GILMORE: Just as a clarification point, Mr. Chairman, when the discussion came up on this, there was a question about the dates and I just wanted to verify that the dates are correct. New York, as most people are aware, we don't have regulatory authority for lobsters so this is done through legislation.

Our legislation requires that the DEC Commissioner must petition or at least communicate with the legislature. At one point essentially there was a concern of whether the date was January 1st of 2010 or was it July 1st of 2009. So, if indeed the FMP requires a January 1st, 2010, our legislation essentially says it has to be consistent with what the plan is.

The reason I'm asking this is that if it is January 1st, 2010, we're fine; we can wait until we see what

happens with the v-notch program. However, if it is July 1st we would need some direction from the commission at this point because the May meeting would be too late essentially to initiate our legislative action. Can we at least confirm, Toni, what that date is?

MS. KERNS: The way the conservation equivalency program was set up with Connecticut and New York, one of the stipulations was that in Year Two if less than 50 percent of the target number was reached, then effective January 1, 2010, the gauge would increase at 3-3/8 inches, so that January 1 date is correct through their program proposal.

ADJOURN

CHAIRMAN CULHANE: Okay, is there anything else under other business? Seeing none, the meeting is adjourned.

(Whereupon, the meeting was adjourned at 4:00 o'clock p.m., February 2, 2009.)