

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

**Crowne Plaza Hotel Old Town  
Alexandria, Virginia  
February 4, 2008**

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**Approval of Proceedings of October 29, 2007 by Consent** (Page 1)

**Move that the Board include in Draft Addendum XII a cost estimate for a trap transferability program and solicit public comment on specific options to fund the program** (Page 19). Motion made by John Nelson; second by William Adler. Motion passed (Page 19).

**Move that the Board approve the Draft Addendum XII to public hearings as modified** (Page 19). Motion made by William Adler; second by John Nelson. The motion passed (Page 19).

**Move that the Board approve for public comment Draft Addendum XIII, to include only the provisions concerning the LCMA Outer Cape Cod** (Page 23). Motion made by Patten White; second by Rep. Abbott. Motion passed (Page 25).

**Move to approve the conservation equivalency proposals for Addendum X from Massachusetts and Maine both** (Page 27). Motion made by George Lapointe; second by John Nelson. Motion passed (Page 28).

**Move to nominate Mark Gibson as the Vice Chair of the Lobster Management Board** (Page 34). Motion by George Lapointe; second by Pat Augustine. Motion passes (Page 34).

## ATTENDANCE

### Board Members

George Lapointe, ME (AA)	Sen. George Gunther, CT (LA)
Pat White, ME (GA)	James Gilmore, NY (AA)
Rep. Dennis Damon, ME, (LA)	Pat Augustine, NY (GA)
G. Ritchie White, NH (GA)	Brian Culhane, NY Chair/ Proxy for Sen. Johnson
John Nelson, NH (AA)	Peter Himchak, NJ DFW, proxy for Chanda (AA)
Rep. Dennis Abbott, NH, (LA)	Erling Berg, NJ (GA)
William Adler, MA (GA)	Roy Miller, DE, proxy for P. Emory (AA)
Everett Petronio, Jr., RI (GA)	Harley Speir, MD (AA)
Gil Pope, RI, proxy for Rep. Naughton (LA)	Russell Dize, MD, proxy for Sen. Colburn (LA)
Eric Smith, CT (AA)	Jimmy Johnson, NC, proxy for Rep. Wainwright (LA)
Dr. Lance Stewart, CT (GA)	Harry Mears, NMFS

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

### Ex-Officio Members

Penny Howell	Joe Fessenden
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### Staff

Vince O'Shea	Toni Kerns
Robert Beal	Brad Spear

### Guests

Jeff Marston, NH F&G	Peter Burns, NMFS
Ellen Bolen, Ofc. of Rep. Tom Allen, ME	Brian Hooke, NMFS
Roger Frate, West End Lobster, CT	Bob Ross, NMFS - NE
Roy Frate, West End Lobster, CT	Chip Lynch, NOAA
Joan Frate, Darien Seafood	Roy Campanale, Sr, Narragansett, RI
Julie Filippi, ACCSP	Robert Campanale, Narragansett, RI
Janice Plante, Commercial Fisheries News	Roy Campanale, Jr., Narragansett, RI
John German, LISLA	

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 4, 2008, and was called to order at 2:30 o'clock p.m. by Chairman Brian Culhane.

### **CALL TO ORDER**

CHAIRMAN BRIAN CULHANE: I'd like to call the Lobster Board meeting to order. You should all have an agenda in front of you. By the way, I'm Brian Culhane. This is my first meeting as chairman, so go easy on me.

### **APPROVAL OF AGENDA**

I'd like to entertain a motion to approve the agenda. Motion made by Bill Adler; seconded by Pat White. No objections, we'll consider it approved.

Is there anybody who would like to add something to the agenda? Pat.

MR. PATTEN D. WHITE: Thank you, Mr. Chair. I have an issue that I would like discussed. I was going to consider doing it as part of the addendum, but I think it would be much more appropriate to do afterwards. It's about giving Area 3 the option of having more restrictive rules in an area specific to trap limits at this point.

CHAIRMAN CULHANE: Okay, we'll take that up under other business at the end of the meeting. Let's approve the agenda as amended. Motion made by Pat Augustine; seconded by Bill Adler.

### **APPROVAL OF PROCEEDINGS**

CHAIRMAN CULHANE: Okay, to the proceedings. You all should have received a copy of the proceedings.

MR. PATRICK AUGUSTINE: Motion to approve the proceedings.

CHAIRMAN CULHANE: Seconded by Bill Adler. Without objection, the minutes are accepted.

### **PUBLIC COMMENT**

CHAIRMAN CULHANE: Now we get to the public comment portion of the meeting. We will entertain comments on the draft addenda when we get to those, but if anybody has anything they'd like to say that's not on the agenda, please come up now. I have

Roger Frate on the list. We do ask that you keep your comments brief.

MR. ROGER FRATE: Roger Frate, President of West End of Long Island Sound; also representing the West End of Long Island Sound V-Notching. I want to thank the Atlantic States Marine Fisheries for voting us on the v-notching and giving us a chance to keep the gauge at 3-5/16<sup>th</sup>. I want to thank our state, Doc Gunther, Lance Steward and Eric Smith for really working hard and getting the money and getting this v-notch going.

At the west end of Long Island Sound, we are having a complete dead industry again. We have a disaster. There are no fishermen fishing. When we came for this v-notching, we had plenty of lobsters, plenty of shorts, plenty of eggers. In 2006, September 11<sup>th</sup>, my son, 45 dead lobsters. We expected to tell you at what we know happened.

Two hundred feet of water in front of Eve's Neck, 45 dead lobsters. Suffolk County, spraying Scourge with helicopters, Methoprine, Anvil, couldn't get anywhere, could only talk to one or two people, won't let me talk to any towns like I've been talking to in Connecticut on what they're using.

2007, June, there were still plenty of shorts and eggers, enough to v-notch. They went into a shed, July, August, September, they were depleting. They were never coming out. It looked like '99. I had no idea what was going on. October 23<sup>rd</sup>, 150 dead ones out of a three-day hauling, water 65 degrees, no high hypoxia. I have the chart here from the nitrogen that the state of New York took between 61 and 85 percent of nitrogen out of the water.

Nothing but what we found out later pesticides, metogenamen, metonic. Baykeeper Kevin McLister has a lawsuit against Suffolk County for spraying pesticides by helicopters in wetlands every two weeks when the moon is full and a new moon. Now that goes all the way from Montauk to Huntington.

I'm not able to talk to anyone but this one gentleman, Don McMann, Lackey, or Wongini, but I can't get anywhere with him. Over the years he just says we're barking off the wrong tree. Finding out he's lowering the storm drains, melathione, Scourge, methoprine, Anvil. All this is deadly to the lobsters.

Okay, there is nothing that I can say or do. This gentleman, Paul Grabowski, went to the pathologist and they also found pesticides in the fish, in the streams, inland. Now goes in the southside and northside. Now, Nassau controls from Oyster Bay all the way to New York City. He's spraying the same

stuff, but he is not getting sued. He is not overspraying but he's using the most deadly chemicals there are for the lobster industry. The whole southside is dead; out in the middle they're dead.

Now, Westchester, that's right against the Greenwich Islands; it goes from Port Chester to the Bronx. Brian Backman, the head of the health department, in Albany, they're using methoprine in storm drains, but it lasts six months. BTI spraying with helicopters; some of the counties are using Anvil. Then we go all the way to New York City; they're using Anvil and BRI. The Sound is saturated with dead lobsters from Norwalk to City Island.

I called the State of Connecticut; they've been very good. I called the DEP – what is his name – Branford and Robinson, head of the DEP pesticide control. He tells me they only use six different towns. New Haven Harbor, they used on August 3<sup>rd</sup>, 1300 81000 methoprine. I have been trying to get them to use the BTI, but I don't why they didn't use that. We had no volume this year.

The lobsters didn't die on our side, but something pushed them out. Then I can go right down – they go inland to Wilton, which is ten miles north of Darien. They used on August 16<sup>th</sup> like 275 pounds. Shelton – at least we can get some information – Shelton, 225 pounds; Bethel, 250 pounds. I believe that's what pushed them out because those brickets last six months.

They weren't dying. We had absolutely no volume this winter at all. I mean, we v-notch, and here is us ready, we put a new motor in our boat. We bought survival suits, we bought a raft for the kids. We did everything right, but there are no lobsters, so my son and my other captain is clamming, and I'm just sitting in the store or go out on a boat once in a while. Wind is blowing 30 knots. We see there is nothing out there but a few lobsters.

I just wanted to take this time and this 15-year plan that the gauge keeps going up. I mean, there is no one out there. We're about 99 percent less fishermen and about 99 percent less traps. No one is going to fish down our way. We're going to try and if there's lobsters there, we'll v-notch. But if we don't stop these pesticides and get our Advisor Committee monitoring these pesticides, like Doc Gunther has them doing.

That's right here that he put in for three times, turned down three times. I gave it to the Attorney General

Blumenthal, and he is going to see what we can do. I just don't know what to say. You people have been nothing but good. I never would have been begging you to v-notch if there weren't lobsters coming back knee deep.

What I see here is it's mainly New York. Now, I'm talking about this helicopter that flies from Montauk to the Frog Neck Bridge. Now that's 120 miles on the coastline. Every fisherman on Long Island is bankrupt, and we can't even talk together. I mean, at least I can talk to every one of my towns, Stanford, Greenwich, and go all the way up the coast and they'll tell me what they're using.

I don't know if they're telling me the truth, but I believe they are. But, New York, I can't talk to anyone, but this one gentleman who is – forget it, you know, you're barking up the wrong tree. He usually lies about everything. I'll get some information from other health departments who tell me what they're doing.

Now the other gentleman, Greg Taryani, who, like I said, from the other side, Oyster Bay to New York City, he controls the same thing. There is just a message there –

CHAIRMAN CULHANE: Excuse me, Roger, I got your point. I know you talk to me all the time, and I'm from New York. Thank you for your comments, and we have to move on with the agenda.

MR. FRATE: I thank you letting me talk so long. I really appreciate it.

## **REVIEW OF DRAFT ADDENDUM XII FOR PUBLIC COMMENT**

CHAIRMAN CULHANE: Okay, thank you, Roger. Do we have any other public comments? Okay, we'll move on to the next agenda item, which is to review and consider Draft Addendum XII for public comment. This is an action item on the lobster history-based trap allocation transfer programs. Toni will lead us through it.

MS. TONI KERNS: Thank you, Mr. Chairman. Staff passed out two draft addendums. You want to go to Addendum XII for this item. This replaces what was on the CD. You will see in red the differences from the document that was on the CD; only some slight changes, not huge differences, but just so you could see easily the changes that were made.

This addendum has been put together over a significant period of time through the Lobster Transfer Committee. At the last Board meeting we went through many of the key issues that are being addressed through the trap transfer history-based allocation programs. At this time we are reviewing the document for public comment. The public comment period would be from February through April, if approved, and then the Board would review public comments and consider the document for final action at the May meeting.

The objective that the transfer committee went through was to identify the issues that were associated with the history-based fishing right programs and trap transfer programs and to accommodate a transfer program with flexibility for the fishery and the conservation goals of the FMP.

Some of the key definitions, just to review quickly, that are in the document, as we went over at previous meetings, is an ITT is an individual transferable trap program allows permit holders to transfer traps from one user to another, but it does not allow for the leasing of traps. A permit holder has a commercial fishing permit or license from a federal agency or a state authority, the state will license an individual and NOAA Fisheries permits a vessel, a key distinction.

A dual permit holder is a person with two fishing permits. One is from the state which authorizes him to fish in zero to three miles. The other one is from NOAA Fisheries which authorizes them to fish within three to two hundred miles. A single fishing history is a person with two or more permits, but only fished all permits from one vessel at a time. The trap transfer tax or conservation tax is an area-specific percentage of each transferred allocation required to be surrendered for conservation purposes when transfers occur.

We have been considering these transfer issues because we have three LCMAs that have transfer programs within their FMP, but we haven't made any significant progress in implementing those programs. Trap reductions that have been faced in the LCMAs are forcing permit holders to seek relief through trap programs so they can either build up their businesses or sell out parts of their businesses if they want to move from offshore to inshore.

These recent effort control programs, especially those in Area 2 for federal permit holders in Rhode Island and Massachusetts, are not recognized by NOAA Fisheries, although they are in the process of rulemaking. Therefore, once rulemaking is

completed, we would like to be able to move forward with a trap transfer program swiftly.

The programs designed in the addendum are sought to enhance economic efficiency of the fishery while controlling fishing mortality and allows relief value for any regulatory scheme where trap limits are permit-specific and low in constraining. Some of the challenges that we have come up against when developing transfer programs is that we have duplicative and redundant allocations in some areas, so there is the potential to qualify for more traps than you actually ever fished at a given time due to the different time periods in which allocations were given out in the different LCMAs.

For instance, the Area 2 Plan uses 2001 to 2003 as the allocation period versus Area 6 which I believe used '95 to '98. The permitting and reporting standards are not always compatible between state and federal agencies. The state permits individuals; the NOAA Fisheries permits the vessel. NOAA Fisheries and the states are in different stages of rulemaking for allocation programs.

In Section 2.1 of your document, the Qualification and Allocation Plans, as I went over, most areas have history-based effort control plans. Every area but Area 1 has an effort control plan. These programs sought to control fishing mortality with permit-specific trap limits, and they are being administered either by NOAA Fisheries, the states or both agencies, depending on which LCMA you're in.

In some of the LCMAs that put together history-based allocation programs, we are not on the same schedule in all jurisdictions. For instance, Area 2 and Outer Cape Cod were the first effort control plans with substantial state water fisheries and state-only permit holders, as well as individuals with federal agency permit holders, and so, therefore, this is the first time that we've faced different schedules where Massachusetts, Connecticut, New York and Rhode Island have gone ahead and allocated traps in Area 2 and NOAA Fisheries is still in the rulemaking process for the allocation of those traps.

The dual permit holder allocations are not going to be fully recognized until all agencies have allocated traps, so, therefore, if an individual who as a dual permit holder was allocated state traps at 400, NOAA Fisheries is still considering his allocation so that fisherman in federal waters falls under the 800 trap cap limit.

An example where we have a dual permit holder with a single-area allocation, the Outer Cape Cod individual allocation from Massachusetts was 525 traps; and NOAA Fisheries, he is still under the 800 trap cap limit until they are finished with rulemaking, under the most restrictive rule that is currently being employed under the memorandum of understanding with NOAA, the fisherman receives 525 traps because the state allocation overrides the NOAA Fisheries allocation because it's more restrictive.

Another issue that we have come across, when developing this addendum, is looking at the most restrictive rule for lobster management. The first most restrictive rule that was put in place was done under Amendment 3 in 1999. It was adopted by NOAA in 1999. It said that fishermen must comply with the most restrictive management measures when holding multi-area permits. That included the smallest number of traps allocated to them for each of the LCMAs they fished.

It intended to allow multi-area fishermen to continue fishing in their historical areas but maintaining conservation of the resource. The Commission amended that definition in Addendum IV and it was adopted in 2003 to change the language to having fishermen include the smallest number of traps allocated to them for each of the LCMAs that they fished.

Anyone with a multiple-designated LCMA on their permit is bound by the most restrictive management measure of those LCMAs trap caps. It allowed them to fish the number of traps that they are allocated in that most restrictive area. Further down I will give examples of this to refresh everybody's memory.

The state agencies and NOAA Fisheries are now operating under two different definitions of the most restrictive rule. But because the states of Maine through Connecticut operate under a memorandum of understanding in distribution of trap tags, the states have agreed to follow the NOAA definition of Amendment 3.

Most individuals that are multi-area trap holders are actually state and federal areas, so then they would fall under that Amendment 3 definition of the most restrictive rule. There are a few that are state-only so that would follow the Addendum IV definition, but the majority are under the Amendment 3. If we change the regulations and NOAA Fisheries came into the Addendum IV definition of the most restrictive rule, there is a possibility that traps could increase. This could be problematic in the stock

assessment areas such as Southern New England where the stock is overfished and depleted.

Under Section 2.3, transferability, the LCMAs' effort control plans include transferability provisions. Outer Cape Cod, Area 3 and 2 all have programs. They're similar, but they are not uniform nor are they integrated. None of the plans, when developed, considered any impacts that they would have on other LCMA fishing privileges, and this is problematic when you try to implement those programs.

There is also no administration mechanism outlined in any of those transfer programs. The Transferability Committee set up a few a founding principles when developing the transferability management program that is proposed in this addendum.

The first is that a lobster permit and its history could not be separated, and a single fishing entity would be considered to have established a single fishing history even if that person was a dual permit holder fishing under a state and federal fishing permit. Fishing histories accumulated under a dual state and federal permit could not be treated as separate histories and stacked for the purposes of qualification and allocations.

Lastly, under qualification and allocation principles, the lobster history accumulated under dual state and federal permits could not be divided and apportioned between permits. This is because the recordkeeping is imprecise, and in many cases doesn't exist to determine what part of the dual permit holder's catch was in state waters and which part was caught in the EEZ.

So a dual permit holder's fishing history would be considered individual, so as long as some part of the catch was caught in both state and federal waters; and if a dual permit splits his state and federal permit, then the history will be considered to have gone with only one of those permits, and the other permit would no longer have any history.

Then the founding principles under transferability was that trap allocations are a reflection of fishing history. Just as a permit holder in the past could not double his traps fished from 1,600 because he seasonally fished 800 traps in Area 2 and 800 traps in Outer Cape Cod, neither should that person be able to gain the equivalent of double counting history when transferring traps, so he cannot double count.

Under the management measures, this addendum is a little bit unique in the sense that we don't have a lot of options to choose from. The transfer program set up management measures that would outline a transfer program. There is always the option of status quo, not having a transfer program, but we're outlining here just the list of measures that would need to be put in place for this program to move forward.

There's a couple of options within the document for certain sections, but most of them, it's a single option. The initial qualification and trap allocations for Lobster Conservation Management Areas with history-based allocation programs, so that's going to be Areas 2, 3, 4, 5, 6 and Outer Cape Cod. It's important to note that if Area 1 establishes a history-based allocation program, the principles adopted through the addendum would apply unless modified through a future addendum to Area 1.

Currently, basically, all the regulations outlined here, unless otherwise noted, would apply to all areas but Area 1. Affected states and NOAA Fisheries would work together to classify permit holders assigned to trap allocations into one of three categories, a state allocation, a federal-only, or a dual, meaning state and federal allocation.

One of the key issues that we have discussed in previous meetings was trying to solve a dual permit holder with a single fishing history, that person sells the vessel with his federal permit but retains his state permit; does he have fishing history left? If he were to be able to keep his history, we showed that he would double the number of traps that were fished in the water as previous, so we have solved that problem by stating that fishing histories could not be separated from the permit.

With dual permit splits, all history would remain with the federal permit for qualification and allocation purposes. For example, if we had a dual permit holder in Area 2, he qualified for 800 state/federal traps, and fished 800 traps, if he sold his federal vessel that retained his state license, he would have zero traps left to fish because all of his history would have gone with his federal permit. He would still have that state license; and once transfer programs were put in place, he could buy up, but he would have no more history as of that day he sold.

MR. ERIC SMITH: What you're telling us, Toni, is that's an example of – okay, thank you.

MS. KERNS: Under trap migration, to prevent migration of traps between state and federal waters, recipients who qualified for initial trap allocations based solely on the ownership of only a state license without a corresponding federal lobster permit or ownership of only a federal lobster permit, without owning a state coastal lobster license, would retain solely that historic access, meaning state-only traps have to stay in state waters; federal-only traps have to stay in federal waters.

The example that's up here shows that I'm a Massachusetts state-only fisherman. Massachusetts allocated me 800 traps. I can only fish those in state waters. If I transfer any of those traps, they have to remain fished in state waters. They cannot be fished in federal waters.

Looking at the most restrictive rule, I would ask that it might be helpful if you follow along with me in your document as well as looking at the slides with the most restrictive rule since it can be confusing. It starts on Page 9 of the document. The most restrictive rule was put in place to maintain the conservation benefits of each area's FMP, but allowing some flexibility for fishermen and effort control plans within each area.

As I said before, we're operating under two definitions; that of the Commission and that which NOAA Fisheries is under. Because of the MOU that most states have with NOAA Fisheries, the Amendment 3 most restrictive definition is most commonly implemented in fishing waters. Option A would be to remain status quo, which would be for the Commission to continue operating under the Addendum IV definition of the most restrictive rule which bounds us by the most restrictive measures of that LCMA's trap cap.

Option B would be to go back to the Amendment 3 definition of the most restrictive rule, which is the most commonly used right now, which is including the smallest number of traps allocated to fish for in each of the LCMAs. If you have multiple-designated LCMAs on your permit, then you're bound by the most restrictive management measure of that area. It allows you to fish the number of traps that are allocated in that most restrictive LCMA.

We have a series of examples to go through to make sure that it's clear to everybody, and it starts on Page 10. I'm just going to kind of read through them. A lobsterman is permitted in both Areas 2 and 3, and this individual's Area 2 allocation is 800 traps.

Based on the historical participation in Area 3, their allocation is 300 traps.

The overall trap cap in Area 2 is 800 and the overall trap cap in Area 3 is 2,600. Under the Commission's most restrictive interpretation, which is Addendum IV, the fisherman is limited to an Area 2 allocation of 800 traps. Three hundred of those could be fished in Area 3 if Area 2 and 3 are elected on their permit. Under the Amendment 3 definition, which is in place through NOAA Fisheries, that same fisherman is limited to a total of 300 traps that could be fished in Areas 2 or 3. Questions. Bill.

MR. WILLIAM A. ADLER: All right, first of all, I wanted to just touch on that dual – where it says dual area permits. You're going to get questions. I understand what you're saying here, but you always keep saying Area 2 and Area 3. That's two separate LCMA's. But, dual permits could mean – as you had up here, dual permit could mean a federal and a state license, but not Areas 2 and 3. It might just be Area 2.

I think there will be a lot of questions at hearing about, well, I've got dual permits, but I don't have dual areas. I didn't know if there's any way to clarify that, but dual permit could mean the same area, because it's state and federal waters; or, it could mean all of Area 2, which is state/federal, and then he happened to have an Area 3 allocation as well, and I can just see some confusion coming unless it's somehow explained. I will stop on that one right now.

MS. KERNS: Okay, Bill, I'll make sure that I have a way to explain. The next example is Example 1A. A fisherman is allocated to fish in Area 2 and Area 3. Their Area 2 allocation is 300 traps, and their Area 3 allocation is 800 traps. Under the most restrictive rule, under the Commission's interpretation that individual can fish 300 traps in Area 2 or Area 3.

Even though we have an 800 trap cap in Area 2, because that individual was only allocated 300 traps, he is limited to that 300 in Area 2. It actually would be the same in the NOAA Fisheries interpretation of the most restrictive rule currently. Questions. Eric.

MR. SMITH: I was going to wait until the end, but since you're going example by example, let me just explain some of the sidebar conversations we've been having leading up to this meeting. I guess I'm curious about the Commission's interpretation, Column 3, in a couple of these examples.

Having had some discussions with a couple of people with the Fisheries Service and with Toni and a couple of people who aren't here today that were instrumental in clarifying that interpretation, whatever we do with this addendum, I think we're going to have to have the committee look one more time at the motions that were passed regarding Addendum IV and the text of Addendum IV to make absolutely certain that the examples fit.

I don't want to go into the details of my questions and how I think they work or how they were intended to work. It's just the way we're going and we want to get this out on the street and get public comment – and I think that's appropriate – but some of these examples may or may not be adjusted based on that review. It's just I'm putting place marker in to make sure we go back and look and make sure we have it right, and that's the only thing I'll say on all of these examples. Thank you.

MS. KERNS: Eric, are you suggesting that review go before I go out for public comment or after or just during?

MR. SMITH: No, it can be during, right.

MS. KERNS: Okay. Example Number 2, again, we are permitted in Areas 2 and 3. Their Area 2 allocation is 800 traps, and their Area 3 allocation is 1,200 traps. The trap cap in Area 2 is 800 and Area 3 is 2,600. Under the Commission's interpretation of the most restrictive rule, the fisherman is limited to 800 traps that can be fished in Area 2 or 3. Under the NOAA Fisheries interpretation, it is the same. That is due to the fact that the 800 trap cap is the lowest of the two.

All right, questions. I'm not getting any questions so I think I'm going to stop going through these examples because the next two are very similar to the previous. It was to make sure that we're cool on most restrictive.

The next key issue that we faced as a committee was looking at the administration of any transfer program. We have no tracking program currently established. Application periods could vary among states and jurisdictions. We have no coordination process established between agencies when reviewing individual applications to transfer traps.

To solve this problem, the committee put together an interjurisdictional data base. This would be developed centrally and maintained centrally. It would track all trap transfers and allocations, and all

jurisdictions would have access to this data base, but to be noted that it would be within the confidential requirements of each of the states, so we would not break any of those data confidentiality rules.

In order to set up this tracking system, substantial development funding would be needed, as well as long-term maintenance funding. Unless funding is put forward to be able to develop this tracking program, no transfers across jurisdictions could be completed. If we cannot fund a tracking system, then the transfer program developed here would be ineffective because we wouldn't be able to have complete transfers. The only transfers that would occur are those within a single state's waters. The purpose of this is to be able to move traps amongst all users. I can't emphasize funding as important enough.

Next is looking at conservation taxes. The group found that for each transfer of a partial allocation, a conservation tax of at least 10 percent would be put in place to further reduce trap reductions. This conservation tax would be based on that of the LCMA that it's occurring within, and the LCMAs would be part of determining what that conservation tax would be. If they wanted it to be higher, then that is available, but it should be at least 10 percent.

For complete lobster fishing businesses, the transfers of whole lobster fishing businesses can continue to occur as they do today. Someone is able to sell their whole business over. Currently there is no conservation tax on the sale of whole businesses in the FMP. Some LCMAs may implement a transfer tax, but it is LCMA-specific.

Until a data base is operational, that would remain as so. Unless it's in the plan already, we would not do conservation tax. Once the data base is up and running and operational and all agencies are using it, we would put a tax based on whichever LCMA those traps came from, so it would at least be 10 percent as outlined before.

If you were transferring traps in Areas 2, 3, and Outer Cape Cod, then the tax would follow that of Areas 2, 3 and Outer Cape Cod for each of the specific traps, so you might have a different conservation tax for each of those areas.

Another key issue that we have brought forward to the board is looking at regulatory consistency with qualification and allocations different amongst agencies. We have different regulations in strategies, between states' differences and then between state

and federal jurisdictions. In order to solve those issues, we have put measures in place for partial business transfers.

While the data base is under development, we would only allow transfers between state-only permit holders, so you could only transfer between – if I'm a Massachusetts fisherman, I can only transfer with a Massachusetts fisherman. If I am a Connecticut fisherman, I can only transfer with a Connecticut fisherman until the data base is put in place.

Another key issue that we looked at is issues with an individual with multi-area trap allocations. We have a distinct area-specific history based on the allocation effort plan. The plans allow for the sale of allocations without accounting for effects on other areas. In order to look at that, we decided that once the data base has been developed and implement, transfers amongst multi-jurisdictions will be permitted, but we would have to have consensus by all jurisdictions before the transfer could occur.

There would be a committee of someone from the states and NOAA Fisheries put in place to make sure that everyone had the same allocation and that individual actually had traps to transfer.

CHAIRMAN CULHANE: Bill, you had a question?

MR. ADLER: Yes, and I'm not sure if this is the place. I just came up with another thing. Now, we have in Areas 2 and 3 – I'll use those as examples – they have different maximum trap allowances. If this person gets an allocation that isn't full, it isn't 800 and it isn't 2,600, let's say, it's less, and this person gets assigned whatever we come up with here, whether it's 300 in one place, 500, or whatever, can that person then buy up traps from, let's say, Area 3 fishermen and therefore in Area 3, where he, let's say, had a 300 trap allocation, can he build up to 2,600?

They're the same traps in the ocean; they're not ones. Can he build up to 2,600 in Area 3, because he bought them, and still keep whatever he got in Area 2? They're the same traps. He's not adding; he's just taking over somebody else's that's already there. Is that going to be allowed?

MS. KERNS: Once the data base has been established and all agencies have allocated and we're working on that data base, if that individual purchases traps from an Area 3 fisherman, then he can, yes, build up to the trap cap of that area. But if they're federal water traps, then they have to stay in

federal waters, et cetera. But he's only building up his Area 3; he's not building up his Area 2 unless he purchases Area 2 traps. Then you have to follow your most restrictive rule.

MR. DAN McKIERNAN: Just to clarify those questions, if that fisherman who had an 800 trap allocation in Area 2 wanted to build up his Area 3 allocation to a high number like 2,600, I think he'd be prevented from fishing both allocations under the current most restrictive rule and anything in the future because he wouldn't be able to fish anything more than 800 traps because that's the trap limit in one of the areas which is obviously lower.

The story line here for me is as these things take place, like oil and water, I think you're eventually going to be separating these areas. So, you may have allocations in two areas, but when the trap limit is applied to your allocation, you're probably not going to be able to fish more than one area if your allocations are different and if one of your allocations is exceeding the allowed trap limit in one of your areas. So over time you're going to see Area 2 fishermen and Area 3 fishermen making business decisions to stay in their respective areas. That's my prediction.

MR. P. WHITE: I was going to get to it later, but that comes into my question, again, on the most restrictive rule. Is that within an area? I am back to being a little confused again because like in Maine we have 800 or 600 in state waters. And, if somebody qualified in Area 3 for 300 – this was the example that we've had before – is he then, according to that chart, the most restrictive rule he can only fish 300?

MS. KERNS: Yes, according to that chart, he can only fish 300 because Maine is under the MOU with NOAA Fisheries, and they are bound by the most restrictive of those two, and his allocation in Area 3 is 300 traps. Even he builds up his business in the other area, he is still going to be bound by the most restrictive rule when it comes to fishing those other traps.

The next measure that we addressed is Section 4.3.3, measures for transfers, traps with state or federal access. Those that have state-only traps or federal-only traps cannot migrate between the two jurisdictions, as we said before. The traps have got to stay in the waters that they more historically fished.

Next is looking at measures that are for partial transfers only. There would be an application

process throughout the year. Documentation would be submitted to the proper agency by October 30<sup>th</sup> to be considered for the following fishing year. The applications would be reviewed and acted upon around December 1<sup>st</sup> and would be effective at the beginning of the following fishing year. These dates could be subject to change according to board approval to accommodate the review schedules and the allocation of trap tags in the states and agencies.

All of the LCMAs with transferability programs would have the same timeframe for an application process since transfers of allocation in one LCMA may affect the allocation that remains in another LCMA.

The recipient of a multi-LCMA trap allocation must choose a single LCMA that trap would be fished in. If someone is transferring a trap that historically was fished, as we call it, a two-three trap, when that trap gets transferred, the buyer has to decide at the time of purchase which area he wants to fish it in, so he has to say, "I'm going to fish this trap in Area 2," and now that trap becomes an Area 2 trap. It can no longer be a two-three.

Also, for multi-trap partial transfers, once an individual transfers traps, all of his other LCMA trap allocations would be reduced or debited by that same amount transferred. For example, if I have 400 Area 2 traps and 1,200 Area 3 traps and decide that I want to sell 200 of my Area 3 traps, my Area 2 allocation is going to be deducted by 200 as well as my Area 3.

There would be a conservation tax on the traps that are sold – I just used 10 percent as an example here – so the buyer than receives 180 Area 3 traps. Those Area 2 traps are gone so that we're not sort of stacking or creating effort into the water because historically those traps were not fished before, and we don't want to increase effort.

Next we're going to go through and look at the effects on permits and trap allocation transfers on areas that do not have history-based allocation programs, meaning for the purposes here Area 1 since it's the only area that doesn't have a history-based allocation program.

Area 1 has an 800 trap cap. While there is a varying degree of limited entry in each of the states, permit holders are subject to the cap. Under federal regulations all federal permit holders are eligible to elect Area 1 and fish in that area at any given time. As fishermen fail to qualify and are squeezed out of

some of the other areas with effort control programs, the potential for migration into Area 1 exists.

By establishing a transfer program in these other areas, it's possible that additional effort in numbers of traps may shift into LCMA 1. For example, if I have a permit holder that sells all of his Area 3 traps but retains his permit, then that fisherman could elect to fish in Area 1; or, for permit holders that do not historically qualify for any of the other history-based allocation programs, he can still qualify to fish in Area 1, so there is potential to have effort migrating up.

In order to look at solving this problem, we have a couple of options to go through. Option A would be status quo, remain the same, continue to allow any individual to elect Area 1 on his federal permit. Option B is when a transfer is made, debit the fixed trap cap in Area 1 by the number of traps that are transferred, so basically you would treat the trap cap like an allocation.

So, I'm a fisherman that has an Area 1 cap of 800, an Area 2 allocation of 400, an Area 3 allocation of 1,200. I decide that I'm going to sell all of my Area 3 allocation, but I'm still going to hang on to my federal permit so I can still fish in my Area 1. Then I'm going to deduct – I'm not selling all. I was supposed to only sell 200 traps – that's a typo on my part – 200 Area 3 traps, so I'm going to deduct 200 traps from each of my Area 2 allocation, and I'm going to treat my Area 1 trap cap sort of like a personal allocation and drop down to 600 as a personal trap cap. The buyer will not be allowed to elect Area 1 on to his permit, and he has the ability to fish 180 of the 200 traps purchased due to the reduction of the conservation tax. Eric.

MR. SMITH: Why, in the bottom row of this slide, does his Area 3 allocation end up being 400 Area 3 pots when he's only transferred 200?

MS. KERNS: Because I made another typo, I think.

MR. SMITH: Well, that's the best answer we could hope for.

MS. KERNS: I'm going to look to my committee members to make sure I made a typo. Yes, I made a typo, my apologies. It should read a thousand. Option C is to put in place to not allow the permit holder to fish in Area 1 once the transfer has been completed. This is a type of limited entry program that would be put into place on transfers only.

For example – and, again, I'm going to have a typo here – I have an 800 Area 1 trap cap, 400 Area 2, and 1,200 Area 3. I sell off 200 of my Area 3 traps. I have left a thousand Area 3 traps, 200 Area 2 traps, and I cannot elect Area 1, and my buyer cannot elect Area 1, and my buyer ends up with 180 Area 3 traps.

It's important to note in two of these options for Area 1, this would only impact those individuals that decide, as a business decision, to transfer traps. Currently, unless Area 1 puts into place a historical allocation program as well as a transferability program, the only people that this would affect are those individuals with federal permits and an Area 1 permit. Questions on this example?

Lastly, states would incorporate any trap allocation levels and fishery performance by each of the LCMAs into their annual compliance reports as well as implement any transfer regulations as according to their state and the LCMAs that have put in place a transfer program, once done, and we would recommend that NOAA Fisheries implement all the measures contained in the addendum document. Questions?

MR. ADLER: Thank you, Mr. Chairman. Will everybody put their hands up that understood exactly what all this was? Terrific! I'm envisioning the public hearing and trying to figure out a way to very simply get across what we're trying to do here. I know the examples you put in, okay.

I was also thinking of another way that might make it simple – as examples you're going to need a lot of this – of the way it is now and what this would mean if it was adopted. Then they look at the way it is now and some of them – like, for instance, that most restrictive one where the Area 2 and 3, the 5 and the 3, and he gets three all the way, and he's not going to like that. He sees that.

Then the way – whatever the option would be – if you can think up some way to make it easier to understand. I think the examples were a good shot and that's a good start, but I'm just envisioning the chaos at the public hearings where they all go “what the heck are they saying”; and then when the decisions come down, it's like “when did that happen”.

CHAIRMAN CULHANE: Bill, we're going to ask you to bring 2,000 miniature lobster traps to the meeting.

MR. ADLER: I don't own that many.

MR. P. WHITE: Two things, and I guess in order of priority, what is the timeline for implementation of this in the normal course of events; and, does that coincide with the funding and regulatory changes that are going to be necessary with states and the federal agency?

MS. KERNS: Well, the timeline is I guess in stages. For in-state transfers, that could happen relatively quickly, depending on how fast a state can implement regulatory measures within their state that coincide with the principles outlined in this addendum for state-only transfers. I think that could be done within the year in some states, potentially, and that would only be for the areas that have transfer programs established.

So, Area 2, Addendum VII outlines that we would put forth a transfer program. Outer Cape Cod has a transfer program already outlined in the regulations. Area 3 has a transfer program partially outlined our addendum. Those areas could move faster than other areas. If Area 6, for instance, wants to have a transfer program, they would have to put forward something to do so.

We're not putting a transfer program in any areas that don't ask for them. So right now this would only be for two, Outer Cape Cod and Area 3. To have within the jurisdictions would be however long it took us to build a data base and get funding. The funding question I put back on this board. I can't answer that. It depends on what the commitment is from the states and from the agencies to commit to, one, startup funding and then, two, long-term funding, and then how that funding is given.

Do we get funding from sales of trap tags that are being transferred or is there a fee from just trap tags in general? There are a series of ways I guess you could come to get it from industry. Since part of this idea to have transferability does come from industry, I would think that some of the funding might come from them in some discussions that we've had.

CHAIRMAN CULHANE: A followup, Pat?

MR. P. WHITE: Yes, if I may, Mr. Chairman. I understand what you said, Toni, but Harry keeps buzzing around in my head because he said when we get into doing some of this transferability, even if the states do it, but somehow we had to document that, if they were a federal permit holder, as to how it affected the federal allocation. You brought the question up, Harry, a couple of meetings ago. Okay, I'm thinking of something different?

MS. KERNS: The states would have to continue to document state-only transfers, but the individual that had a federal permit wouldn't be able to do a state-only transfer because he, in a sense, would be a dual permit holder, holding a state and a federal license. Those individuals could not transfer until a complete system has been put in place. Only those that have a state-only license can transfer only with another individual with the same state-only license. It's a limited number of people that would be able to move forward quickly.

REPRESENTATIVE DENNIS ABBOTT: Thank you, Mr. Chair. Bill Adler talked about how many of us understood this. I think I probably would have a great sympathy in Toni having to go out to the public and present this very seriously. I don't know how this addendum is going to be received or how it can be received because we've heard this presentation now essentially a couple of times, and we've all had our problems with it.

I know Toni must be battling severely with this, and I hope you survive a number of public hearings because I don't think that your task is I won't say as easy as it should be, but I think something has got to be done to make this more presentable, and I don't know how to do that. If you went out and picked five people off the street right now and had to explain this to them, it would not work, I don't think. That's all I have.

MR. G. RITCHIE WHITE: Thank you, Mr. Chairman. Following up on what Pat said, I guess I have concern about how this is going to be administered and where the money comes from, that that isn't part of the decision of going forward on this. That doesn't seem to be wrapped into this and shouldn't that be in the forefront? In other words, shouldn't we know how this is going to unfold and who is going to do what and who is going to pay for it prior to going forward?

MR. JOHN I. NELSON, JR.: Thanks, Mr. Chairman. In sympathy to Toni, without trying to explain it, though, it struck me, when I was going through this, that this is a request, really, from the LCMAs, a series of them, or whatever, that wanted to put in a transfer program. I suspect that what we ought to do – and staff can do this. We don't have to vote on it.

I think they ought to just put that in the first page, second page, right in the public comment process and the proposed timeline and just lay it out a little bit more that this document is in response to a request by

LCMA whatever who wanted to develop transferability programs, and that it was therefore developed by a committee to have something that would be effective.

But I think it goes back to exactly where the LCMAs – they're the ones that asked for it. It makes sense; I'm not arguing against it, but it is complex, but the fishermen are the ones that recognized the need for this so they ought to get the credit, if you would, instead of Toni for developing it. So, it's just a suggestion about putting something probably on the second page, Mr. Chairman.

CHAIRMAN CULHANE: Thank you, John, and make sure I have your phone number before you leave. Eric.

MR. SMITH: Two comments. This is one I'll have my staff run the hearing on for the same reasons you've been hearing. No, only kidding. Well, I might, but the two points I wanted to get to, Ritchie was quite right. I mean, we need to have a sense of how we're going to pay for this because that's a key factor that this won't go anywhere unless we can develop it and keep it implemented.

Having said that, I think it would be beneficial to go to public comment, anyway, because this I fear or predict is going to be one of those addendums that comes back with so much comment that explains just where the soft spots are that we're going to want to retool, revise and maybe get another round of public comments. It might not be ready for prime time, but there's no other way to find out than to lay it out in front of the public, who is going to be affected, and see what they have to say.

I have to remind ourselves when we did Addendum VII, which was largely Area 2 history-based allocations, we more or less promised those guys we were going to have a transferability system. When we said we're going to have a history-based allocation system, you're not going to get every pot that you wanted to have up to the cap, but there will be transferability a year later that will allow you to adjust your business, acquire pots from some other guy, and bring them up to where you want your business to be.

That wasn't a guarantee written in stone, we never do that, but that was our intention, and it's proving to be a more difficult challenge because of all of what Toni just went through. My view is we would benefit if we got the public comment this spring and then we'll decide where we are. That's my view on the funding. It shouldn't keep us from going to public comment.

The other point I'd like to make, I was trying to read Pat White's mind before when he asked Dr. McKiernan a question. It's always a dangerous thing to try and read anybody's mind, but I sensed a little bit of consternation when he asked that question and the answer he got, because I have the same feeling, and it's where I had my concern a while ago on the examples.

I guess I've changed my mind. I do want to lay out an example that's in the document and show you the two interpretations of it. Then if it's what Pat seemed to be concerned with, we maybe need some clarity on it before we go to hearing, so I guess I don't want to leave it until the end.

The example is 1A on Page 10, at the top. It basically says if a person has an allocation – his history allowed him an allocation in Area 2 of 300 traps, and his history in Area 3 allowed him an allocation of 800 traps, the resolution under the Commission interpretation is he gets 300 pots and he can fish in either one of the area.

My view of what we did with Addendum IV – and I may be wrong. That's why I think we need to go back to the committee – and I'm going back to my staff, I guarantee you, and look it over again. My understanding of the most restrictive rule was that person would get 800 traps of which 300 could be fished in Area 2.

When Pat asked his question of Dan McKiernan, he said a guy who has got 300 pots in Area 3 and he's got his 800 pot limit in Area 1, and the answer – well, the answer under the federal interpretation, there is no confusion, he only gets 300. We're only talking in my example of the Commission interpretation, which is why I didn't use Area 1, because the answer to Pat is he only gets 300.

But if the Commission interpretation would otherwise allow him to have 800 of which only 300 could be fished in Area 3 and the federal rulemaking adopted that in the future, then he would have 800 of which only 300 could be fished in the area with the lowest allocation. That's something that probably is only going to take a conference call – more importantly, it's going to take a reading of the actual motions for Addendum IV and the text at the time.

I'm going to do that myself, anyway. If all of us concerned about these two interpretations do that, we can probably resolve it without delaying the hearings. History may just show that I was wrong, and that's

fine, and then all we've had is a little bit of debate on the two points. But if I'm not wrong, then we probably need to make that change before we go to public hearing because it's going to really confuse people and probably alarm them unnecessarily.

I think the question has to be resolved, and probably Bob and Toni and Mike Ross and the people who have been key in this thing can look at the exact language. If these examples are correct, then that's fine, we've had the debate and it doesn't hold us up. Thank you.

MR. HARRY MEARS: Thank you, Mr. Chairman. I had two comments; one dealing with the comments on complexity of the public hearing document which we have before us; and, secondly, another perspective on the importance of funding.

First on the complexity issue, I don't think it's going to get any simpler than what we have. We essentially have an addendum that provides for inter-transferability. I know one of the constant comments, ever since we adopted it, was we need to see examples, how it's going to work, or why are there so many concerns? Now we know and I think they're well articulated in the draft public information document.

I would just caution against any optimism to think we can make it, in fact, explainable to five people that you pull off the street. The audience is the LCMAs that requested the document, and I think it does very well or it's getting right to the point where it does go into the level of detail that's needed to show how we're going to implement an inter-transferability program in three different lobster management areas that impact five different jurisdictions.

I think the group did a tremendous job in this, which leads to my second question, again on the funding. I think Toni did a good job of emphasizing how important the funding issue is, particularly to transferability between state and federal jurisdictions. I also think it's important, certainly in the longer term, to within state programs because the way the draft addendum reads now it's going to be one entity that monitors all transactions, which means if you have four separate states between now and December that begins transferability – we might have that now, I'm not sure.

I know Massachusetts is doing it; I'm not sure if Rhode Island and Connecticut are. But essentially this envisions a turnover of all the data base and tracking history to what is envisioned to be this

commonly accessible data base. I do think it's time that we start giving this data base some targeted attention, try to give it some arms and legs, because these questions will pop up during the public hearings in terms of who will be monitoring it, how will it be done, to what extent it will be accessible.

Toni made a recent comment that I don't think is addressed to any other than a general extent in the current version, and I think it should be, should, in fact, industry pay for the data base, should it be through an additional one or two cents to a trap tag? I don't know. But, I think that's a realistic question to ask certainly to the LCMAs who asked us to implement this proposal.

I think concurrent to the time this goes out for public comment, I would strongly encourage – and I would make it a motion, if necessary, Mr. Chairman – for a targeted workgroup to give the arms and legs to what this data base needs to look like, what type of upfront software development needs to be accomplished, how many people are needed to run the program both in the short term and next year and the year after and ten years from now. If this is implemented, it's critical to the livelihood and business decisions of the entire lobster fishery in the areas for which an inter-transferable trap program will be implemented. Thank you.

Mr. PETER HIMCHAK: Thank you, Mr. Chairman. This might be a two-part question. In these discussions I always look at the lobster stock areas as superimposed on the LCMAs. And with this migration of TACs – and I know there is a trap tax of 10 percent reduction in pots, but I'm trying to grapple with the inter-relationship of Addenda VIII and X and number XII.

For example, if you're moving traps into Area 3; I mean, Area 3 encompasses three separate stock areas, so what kind of conservation mechanism is built into, say, transferring into Area 3 that is in the South New England stock as opposed to the Gulf of Maine or the Georges Bank?

MS. KERNS: I think, Pete, that the TC has recommended to the Board that Area 3 – management areas should follow the bounds of the biological stock in the areas, but the Board so far has not responded to that recommendation, so, therefore, as these transfers occur it's still within the bounds that the Board has been following to not separate Area 3 into three units as if you would with the stock areas.

So, the only thing that we would know is as we have increased harvester reporting, depending on the state that the individual who purchased the tags from, to what degree of reporting there is, we would know at least which statistical area those tags are being fished in. The statistical areas, for the most part, fall within the biological stock unit, so we would know where the traps were moving to and from.

MR. HIMCHAK: So, the second part of my question, then, we wouldn't know until after the fact all the transfer is going into the statistical areas of Area 3 with the Southern New England stock. We wouldn't have the mechanism to say, no, we've reached our limit; and if you go into statistical areas in Area 3, you can't transfer traps into there?

MS. KERNS: No, you would not, but you don't have that ability right now, either, with an individual. An individual who has an Area 3 permit can fish anywhere he wants, so it's no different than what is currently going on today in terms of effort control, quote, unquote.

CHAIRMAN CULHANE: The next person on the list is Dan McKiernan.

MR. McKIERNAN: I'll respond to Pete's question. I think one of the confusing details about this addendum has to do with if you flip traps from one area you'll lose traps in another area. The motivation behind that, Pete, is to prevent, when a transferability program is established, the proliferation of traps in Area 3.

What I mean by that is there is some number of traps in the Area 3 allocation scheme that are presently unfished; and the day that a transferability program is established, if it's allowed to flip those, they will be flipped, and, therefore, you'll have an increase in traps in Area 3 somewhere. We all know that we can't control the Area 3 fishery by stock unit at this time.

My second comment has to do with what Eric said. I agree with Eric, and I just want to remind the Board that transferability is a necessary compliment to any trap allocation scheme that is restrictive. Area 3 is actively reducing its traps. Therefore, the pain of that is relieved if somebody can get traps from someone who is getting out of the business, and that's the whole point.

The Outer Cape and Area 2, we allocated to many fishermen fewer traps than they reported fished, and they screamed for a transferability program to relieve

the pain. You're not hearing about the need for a transfer program in Area 6 or Area 4 or Area 5 because my guess is that the traps aren't restrictive. There are more traps in the system or among permit holders than people really need if you add them up in terms of how many were allocated.

So, these transfer programs are needed for the areas where traps are truly limited. As far as the comments about how confusing this is, I think it's especially confusing for Area 1 industry people or managers because allocations just aren't in the jargon for what is going on in Area 1. When I spoke to fishermen last weekend at the MLA Show, I quickly explained what the impacts would be on Area 1, and all the Area 1 fishermen just walked out.

The people who were left were Area 3 and 2 fishermen, and they very much understood these issues because they're looking at a state permit with an allocation. They have a federal permit with an allocation, and they're trying to figure it out, so this is a regional issue. My last comment is this at end is going to be a struggle between how much flexibility you want to give the fleet and how much flexibility the fleet should get in order for us to have a program that is administrable and enforceable.

What concerns me is if we're truly flexible and we allow, under the most restrictive rule, some in three and some in two, not to exceed some number, and then we allow transfers, we could wind up with a system where someone's trap tag order to Stoffel Seals could have a subset of their trap tags be Area 2, Area 3, Area 2-3, Area 2 state, Area 2 federal.

It's going to collapse because it won't be enforced – it won't be complied with. At the end of all of this we've got to make rules that are simple even they're somewhat inflexible, but can be enforced and we can manage these. The industry, ten years ago, wanted area management, and now the areas don't line up the stock units, and we accept that. But, if we continue to allow cross-area allocations and cross-area transfers, I think we're going to wind up with a system that is not administrable five or ten years from now.

MR. ADLER: Thank you, Mr. Chairman, a couple of things. First of all, just be careful if you're trying to say that this system was brought about by the LCMTs, because their contention, in most cases, was that they didn't want this at all, and that they were forced by the government to reduce traps, and that's how this transferability scheme got going.

Some of them felt it was rammed down their throats, so be careful when you try to say, “Well, you wanted it,” because you’re going to get, no, they didn’t want this at all. But, this is the only way through the morass that they had to do this. That was one point.

The second thing is I agree with Eric that you need to get out in the street with this and take it out, and Eric had very good arguments – take it out, get it around. You may have to revise things and everything else, but I think moving it forward is good. The third thing, some parts of this, some of these things that are proposed are pretty simple, pretty simple and straightforward.

I don’t think anybody will have trouble with some of these parts. That’s another reason to take the thing out because we can fix some of this very simply because they will read it and they’ll go, “Yes, I understand that point. Yes, this should be yes or no.” The last thing, going back to Pete, we don’t want to get in right now – you don’t want to get in right now to playing with the lines and the areas. Let’s try to get through this particular thing before we ever go back and look at that. Thank you.

MR. GEORGE D. LaPOINTE: A couple of comments, Mr. Chairman. I think Ritch mentioned cost and Harry did. I think it would be good to estimate what it would cost people. You know, you could just shoot from the hip and say how many tags are in Areas 2, 3 4. I don’t think it’s two or three cents apiece; I think it’s ten, fifteen or twenty cents apiece to be honest about what it could cost people. I think you could just do some back-of-the-envelope calculations to tell people what it might cost for the care and feeding of this process.

I have a slightly interpretation that Bill does about who asked for what. We all asked for area management, all of us. We asked for it because fishermen asked for it, and we said we were going to try to make it work. The trap tag system reductions weren’t rammed down their throat. It was an alternative that was presented to meet targets. The other alternatives were ungodly biological targets.

So people said to make this work, this is what they sought. I think we should all be reminded, when we talk about whether we’re putting something together that’s administrable or enforceable, that we shouldn’t agree to things that we don’t think can make work. I mean, it’s easy to say, “Oh, we’ll work it out later; we’ll work it out later.” Well, there are a lot things that maybe we can’t, and we need to be honest with

ourselves and the stakeholders in this process about that. Thank you.

COLONEL JOSEPH FESSENDEN: I just want to talk a little bit about our Maine experience on federal permits. We have about 1,200 federal permits in Maine. A few years ago I was contacted by Bob Ross and Peter Burns about the Maine fishermen holding multiple permit areas; for example, one, two, three; and, for them to continue with those multiple permit areas, they have to comply with the most restrictive rule.

With Area 3 going to three and a half inch minimum size, Maine fishermen can’t make a living with three and a half inches, so they had to drop Area 3 from their permits. Area 2, I believe, is 3-3/8ths right now, which is bigger than 3-1/4 inches, so all the Maine fishermen dropped Area 2 from their federal permits.

What has happened to our 1,200 fishermen, federal fishermen, they’ve dropped all management areas other Area 1. There is only like three or four fishermen in the whole state, maybe six – I don’t want to exaggerate here – maybe six fishermen that have kept more Area 1 out of 1,200 fishermen.

I kind of wonder what is happening in the other states because under the more restrictive rule, if you’ve got Area 2 and Area 3 on your permit, along with Area 1, you have to go by the most restrictive measure, which, for example, could be 3-1/2 inch minimum carapace length. With this discussion, as you go around and qualify people on transfer of traps, it’s really an individual thing.

We deal with fishermen individually and see under their circumstances where they qualify and what they’re going to have for a trap allocation. To try to broad brush it, I don’t think you can do it. We went through this with 1,200 fishermen and you would not believe the fishermen that would call me in Augusta and complain about dropping Area 2 and Area 3 from their permits.

I don’t believe – the only way they can get them back is the fish with bigger gauges and under different more conversation restrictive rules, so it’s something to keep in mind when you go through this process. Somebody mentioned earlier that people are going to eventually be fishing in one area only, and I think in Maine that’s what our experience is. Maine fishermen with federal permits are really fishing in one area only, and that’s Area 1. Thank you.

MR. R. WHITE: Thank you, Mr. Chairman, just a followup on what George had said. I think at the least we need to have in this document that if the fishermen are going to pay for this, that we need to tell them, whether we tell them how much, at least that should be in there, I think. If we can come up with an estimate, then reflect that and that would be even better.

MS. KERNS: I have a question for the Board. When the committee puts together these changes to the document, especially looking at the cost, does the Board want to look at it and just those individuals participating in the transfer program paying for that cost or all individuals fishing for lobster traps?

We can look at it and say, okay, we have 10,000 lobstermen on the coast and you can divide it that way; or, you can look at just those areas that have trap transfer programs either proposed or already in their regulations, and looking at those – you could also have where you have just those individuals that are actively transferring. Obviously, as the pool gets smaller, the higher the price goes upon those individuals. Does the Board want to see options for all or just some?

MR. LaPOINTE: Under that option of all fishermen paying for it, I assume that's all fishermen in the areas that have transferability.

MS. KERNS: That was my question to you, is it all fishermen, is it just fishermen in transfer programs or just fishermen actively transferring?

MR. LaPOINTE: I'll give you Maine's perspective. The idea that we – and we just increased trap tag fees to pay for some lobster/whale research. The idea that we would use our authority to charge fees for a transferability program we're actively trying to avoid will not work.

MR. NELSON: I agree with George, there would be a lot of resistance to paying for something that they don't feel that they're involved in, but yet that's the type of discussion you ought to have. I would suggest you have it for all and then partitioned out for those that already have a transfer program, and, of course, Harry. Seriously, I think you need to have that range of options going forth.

If there is a concern in Area 1, which we've heard about – and I think some Area 1 people initially talked about you can't let people transfer into Area 1. That started a lot of discussion associated with transferability. We haven't had that discussion take

place with LCMA Area 1, and that needs to. I suspect George is going to be very right as far as some of the reaction to it, but we may as well get the full reaction rather than a limited version.

CHAIRMAN CULHANE: I think George wants to respond, and then I'll get to that side of the table.

MR. LaPOINTE: Well, my first response is when I was thinking about having no hearings on Addendum X, XII, XIV, XVIII, whatever it is, I'm going to have a lot more now. I don't think that's going to happen. I don't think that's going to happen; and much like we were saying before, if we don't think it's a viable, enforceable, administrable option, why are we putting it in?

And, again, the idea that we have fishermen in Area 1 paying for something they don't want, it doesn't make sense to me, and it's going to raise a lightning rod on this entire issue that, to be selfish, frankly, I don't need.

MR. McKIERNAN: I think this part of the discussion isn't really warranted at this time. In the committee we talked about the need for some development costs for this data base. We were hoping that maybe ACCSP could address it. It may be substantial; it may be a couple of hundred thousand dollars just to develop it.

Once it's developed, I think the estimate coming was it would one FTE working through ACCSP with state support where state agency folks would be assigned to get the data up there. I don't see this as a stand-alone program that a contractor would necessarily do, except to develop the data base.

Maybe this is an issue for the Policy Board as they advise Vince and ACCSP about high priority statistical projects. You know, I can envision our staff – we have anywhere from one to four or five staff that work full-time on licensing issues. I can envision one of them dealing with this almost as a full-time assignment, but I don't see us extracting money out of the trap tag orders.

As it is in Massachusetts and many other states, the trap tags are bought directly from the vendor, and I don't see us taxing the trap tags without a lot of grief and administrative overhead. I think it's an issue for the Policy Board to give us some support for that kind of program development.

MR. SMITH: I'm glad Dan spoke when he did because if the committee has looked at this a little bit

and preliminarily cost it out or at least looked at the manpower that might be required, it won't be quick to get through ACCSP because there is a schedule of setting priorities and getting things into the mill and having them actually then developed.

But, it's not as expensive as we think it is and maybe it's something that computer guys can look at and say, "Oh, yes, I know how I'd do that." So, that's an opportunity and I appreciate Dan saying that if for no other reason I think George's blood pressure went down about 30 points, and that's always good.

I know what he is getting at, and I wouldn't run those hearings in Maine. I mean, that's just impossible to contemplate. However, big however, if you think about what Toni prepared and presented up there, one of those options is a direct benefit to the Area 1 fishermen, and that's the one that says under Option C, if somebody transferred any part of their allocation in one of the areas that had transferable pot allocations, they could then go and designate Area 1 and go fish in Area 1.

That's what the Area 1 fishermen have been asking for, and, then, therefore, you can probably draw a line to the point of saying, well, then, on your trap tags maybe you ought to compensate into the system or pay into the system that administers that process that benefits you. I still wouldn't want to run the hearings, but at least there is a logical way of explaining why we would do what John Nelson rightly pointed out, which is have a range of alternatives on how you would fund this thing.

MR. LaPOINTE: When Dan mentions going to the Policy Board or ACCSP, that's certainly something – you know, you can submit anything you want. I don't think we want to go to them for support. I think the proper thing would be to go for consideration. One of the things we have to think about is either the Commission or the ACCS Program is already over-subscribed, so the idea that we take a program of undefined cost and ask for support or consideration strikes me as a strange way to go. I mean, we certainly can do that.

The other important thing at least about going to the ACCSP Board or the Policy Board is that it would get consideration by more states because those states who don't sit on the Lobster Board would be impacted as well.

CHAIRMAN CULHANE: Okay, at this point I saw at least one hand up in the back. I would like to take some limited public comment on this. The hour is

getting late and I think we should get a motion on the table.

MR. JOHN GERMAN: Thank you, Mr. Chairman. My name is John German; I am Area 6 fisherman. I fish in New York. I agree 100 percent with Mr. Adler's comment that this was rammed down the throats of the fishermen, this whole process right from the beginning. I would like to say I've been a fisherman all my life, but that's not true yet, so I know how they feel.

But, as far as I can see this addendum, this addendum puts more effort on this fishery as far as I can see than any other addendum and amendment put together, and I have been involved with this process since the beginning. In the state of New York and Area 6, we had a buyback of trap tags. We bought back approximately 82,000 tags, which is 25 percent of the effort on our side.

There were applications for more than 82,000 more tags when they ran out of money. Those 82,000 tags are still out there, and they're latent effort. There are a lot guys who aren't fishing their full share of tags right now, including myself. The only incentive that keeps that latent effort there is the ability to sometime in the future sell it.

All that latent effort, which is not being used right now at all, could be transferred in an active effort, because the guys that have those tags are not fishing them or they're older fishermen or people who want to sell tags are not fishing those tags or their full allocation. The effort is very low, but when they sell it to somebody, the person that buys those tags, they get those tags no matter where they come from, that boy is going to fishing them because he has got to make back some money and he is going to younger and it's going to be active effort right to hilt.

So, this particular addendum increases the effort, I don't know what to say, ten times, whatever, a large amount. Everything we've seen so far, that I've seen since beginning the process of reducing effort, reducing effort, reducing effort, and now we want to increase. Thank you very much, Mr. Chairman.

CHAIRMAN CULHANE: Thank you, John. Do I have anybody else in the audience? Okay, it's back to the Board. Does anybody want to get a motion on the table? Bill.

MR. ADLER: Just to make things interesting, I will make a motion that we take this to public hearing as amended, if any amendments were made.

CHAIRMAN CULHANE: We have a motion; do we have a second?

MR. LaPOINTE: I don't want to second it, but tell me what the modifications are? I can support the motion if I knew what they were and it didn't include Area 1 paying for extra tags. We have all been yammering for about an hour and a half, so which ones of those are modifications and which ones aren't. We need some help here.

MS. KERNS: I'll go through the modifications that I wrote down.

MR. LaPOINTE: Are they written modifications or are they the discussion modifications?

MS. KERNS: I'll go through the ones that I wrote down to modify. The read modifications, yes, are in; to add a little bit of intro on the history of effort control programs through the LCMT process and the request for transferability in those programs; as well as under the most restrictive rule definition to go back and look at the motion that was done for Addendum IV; and then look at each of the examples to ensure that we have the right system going; and then under Section 4.3, the data base, adding options for sources of funding.

The sources of funding that I currently have, which I'm still not clear because there is debate amongst the group, is having all pay for, having just those individuals within an LCMA that have the ability to transfer, and then having only those individuals that are actively transferring, so having some sort of fee associated with the actual cost of application for transfer; as well as sources of funding through state and agencies; and then the corrections to the tables that were made.

So, my one question is do I or do I not – does the plan development team include all or not, all fishermen, because there was disagreement, and I don't have good direction – the PDT doesn't have good direction.

MR. SMITH: Suggestion, Mr. Chairman, that is going to need the motion before we talk about the addendum document. It's just going to be after some debate about how people want it to proceed. There are clearly differences of opinion around the table.

MR. R. WHITE: Question. What work would be involved in coming up with an estimate of cost because I think that would make a big difference how

expensive this is as to how each of those options look.

MS. KERNS: We have asked for an initial estimate of cost from ACCSP and they have given us one. That was a back-of-the-envelope, very quick estimate. I think I should go down and talk to them a little bit more to have a – I think a better estimate might be more appropriate. How much work that would take I can't answer. The original number was \$200,000 for startup and then \$80,000 to maintain per year.

MR. R. WHITE: Then, could that be attached to each of those options as per how many traps, you know, a price per trap or a price per state agency? In other words, could we equate that cost to the options, of going back to options who is going to pay, whether it be fishermen or state agencies or Atlantic States or the federal government?

MR. P. WHITE: I guess I'm wondering, based on what Eric said, if the group would be more receptive to this motion if it didn't include the funding. I don't know where the chicken and the egg scenario comes in here. I think a lot of work has been put into this addendum to try and accommodate these areas that want to have transferability.

So I guess my question to Eric and others that are hesitating to second this motion, like myself, would they be more inclined to do it if I made a friendly amendment that we withdrew the funding part or whatever and take it on two different motions?

CHAIRMAN CULHANE: Do you want to tackle that, Eric?

MR. SMITH: Well, since Pat asked me, my view is I didn't second it because I was waiting to see how this issue would get resolved. It was the discontent point, and I was just kind of not wanting to make problems for ourselves if we couldn't resolve this one. I just did quick math, and if there was, like, six or seven hundred thousand pots out there, not counting Maine, and you increased the cost of tags by a nickel, you'd only come up with about thirty or forty thousand more dollars.

So, if you don't have Maine in there for the reason I offered before, you probably can't afford to do it because you'd double the price of tags before you'd come up with the kind of money that you'd need. That makes me stop and wonder – I hate the thought of delaying of getting the public comment on this because I know what the discussion was in Area 2

when the history-based system was adopted. It's exactly the way Bill described it, too.

But unless we have a plausible way of funding it, we know we'll have to go out and get comment again. The rest of this document has enough in it to be spoken about and may be improved, but how to fund it, unless Maine can stomach a bunch of ugly hearings, that's the only way I can see paying for it with a tag increase, because, frankly, there are so many pots out there in Maine.

Then somehow you can get to afford it, but we've got to take George's lead on that. He knows what they've gone through; he knows what they'll have to go through. I really don't want to put him in that position if it's just an absolute non-starter. But as John Nelson said a long time ago in this discussion – I think it was John – if there is absolutely no way to fund the development and maintenance of this thing, then we're just kind of barking up the wrong tree.

CHAIRMAN CULHANE: Harry has got a way out of this for us.

MR. MEARS: Well, I'm not so sure. I'm going to go back to my earlier suggestion. The current document already refers to the importance of the tracking data base, and perhaps there could be a question – or not a question, a comment asking for subsequent public comments on ideas of how to fund it, but it could reference the point that concurrent with taking this to public hearing, we're going to consider comments and concurrently on a parallel analysis, a more detailed accounting of the short-term and longer-term costs that it would take to support the program. Again, I actually support some addendum going to public hearing. I think we do need public input. I think we owe to them. A lot of work has gone into it.

I think these are crucial issues that are not going to go away. I believe we could address some of the discomfort being felt here today by a smaller workgroup coming back to the Board in April with their own synopsis, their own analysis in consultation with Commission staff and ACCSP staff, with, again, a better characterization of the resources it would take to administer this program into the future should it be implemented. So, again, I would support this going to public comment, but I just as strongly support a workgroup being put together to look into the cost parameters. Thank you.

MR. NELSON: Thanks, Mr. Chairman. You don't have a second yet, so I guess we want to resolve the

funding scenario first. Are you looking for a motion? I would move that we include a cost estimate for the cost of the transferability program and not include ways that we think it could be funded, but ask for comments on how people feel it should be funded.

CHAIRMAN CULHANE: Okay, I'm not really sure I understand where this stands now. You're proposing a motion; we've got a motion without a second on the board here.

MR. NELSON: Well, you don't have that. What I'm trying to do, Mr. Chairman, is just deal with that funding issue and then we come back to the motion to move ahead with the overall addendum. I'm certainly sympathetic to what George is concerned about, and I think that maybe the way of getting at this is to – and I think Harry was laying it out there, too – is to put a cost estimate in place.

I think I heard \$200,000 initially and then \$80,000 to maintain it. That's what you just put in there and you ask for public on it, with the clarity of it that somehow we'll need to provide that type of funding. Funding will need to be provided in order for it to go forward, and that's what we're looking at. It could be trap tags; it could be some other ways – trap tag, increasing costs, or some other way that is being done, but we don't have that defined at this particular point. So, that's what I'm suggesting.

CHAIRMAN CULHANE: Okay, Bill, are you seconding?

MR. ADLER: Yes, I'll second that motion.

CHAIRMAN CULHANE: Okay, we have a motion and we have a second. Discussion? George.

MR. LaPOINTE: Should the motion also include the approval of Addendum XII with the motion? Oh, you just want to approve this concept, all right.

MR. ADLER: All right, is this also to – what I had said originally – approving it to go out to public hearing; is that right, John?

MR. NELSON: I didn't want to confuse the issue, and I thought the Chair had asked for us to resolve the funding one, so we would add this component into the addendum, vote on that, and then we go back to your motion. I will be happy to second it then, that we would move it forward as amended for public comment.

MR. ADLER: Okay, that would be good so we can make some progress here.

CHAIRMAN CULHANE: Okay, discussion on the motion.

MR. R. WHITE: I think John said it, but just to clarify that we would not be going forward with these options without finding funding, so it isn't just that we're asking for ideas of funding, but the funding has to be available for us to proceed with trap transferability.

CHAIRMAN CULHANE: Okay, anybody else?

MR. NELSON: And again, just to be clear, Mr. Chairman, when I say specific options to fund the program, my sense is you're looking for input as far as outside of state and federal funding. State and federal funding always can be there – well, if Harry comes through with it – but we're looking for options that the industry would come up with that's outside of state and federal funding.

CHAIRMAN CULHANE: Very good. Anyone else? We have a motion; let's call the question. The motion is move that the Board include in Draft Addendum XII a cost estimate for a trap transferability program and solicit public comment on specific options to fund the program. Motion by Mr. Nelson; second by Mr. Adler. You have one minute for caucus.

(Whereupon, a caucus was held.)

CHAIRMAN CULHANE: Okay, are we ready for a vote? All in favor of the motion, please raise their right hand; all opposed; any abstentions; any null votes. The motion passes. John.

MR. NELSON: Thank you, Mr. Chairman. I would to second Mr. Adler's motion to move the Draft Addendum XII to public hearings as modified.

CHAIRMAN CULHANE: Okay, now I'm confused again. Bill's motion is still on the table, okay.

MR. NELSON: I just wanted to second it before somebody else did.

CHAIRMAN CULHANE: So we have a second. Bill.

MR. ADLER: Thank you, Mr. Chairman. Okay, now this is just discussion, and I just wanted to add, Toni, go back to that little thing I mentioned about dual permits, and it would be good if you explained what a dual permit was. It could mean that you have

a federal permit but not two different areas. Then you won't have to explain it.

Another reason for my support to go to public hearing with this stems back to the fact that we did, in fact, promise these fishermen, when the plans were eventually approved, one of the components was we promised that they would be able to transfer. That's my rationale. Thank you.

MR. MEARS: Thank you, Mr. Chairman. I favor this motion, but going back to Mr. Nelson's most recent comment, I would urge that this Board recommend to Commission staff, Toni, to work with the PDT to come up with wording to capture our special request for comments other than governmental assistance on how to fund the program. Otherwise, they're going to say have the government fund it. As Mr. Nelson indicated, we already kind of know what options we have to look into. Thank you.

CHAIRMAN CULHANE: Is there any further discussion on this motion? Are we ready to call the question? Do we need time to caucus? Okay, all in favor raise your right hand; all opposed, same sign; any abstentions; null votes. The motion passes.

### **REVIEW OF DRAFT ADDENDUM XIII FOR PUBLIC COMMENT**

Okay, now we're ready for Addendum XIII, and this is to formalize LCMA Outer Cape Cod effort control plan. The work for this one has been done by Massachusetts, and Toni will lead us through this one. I'm sure we'll find it much easier.

MS. KERNS: Thank you, Mr. Chairman. The staff passed out to you at the beginning of this meeting the draft of Addendum XIII. Please disregard the addendum that was on the CD. The plan development team had a misinterpretation of the Area 3 LCMT request, and it has been, hence, revised. The Outer Cape Cod portion of this document has not changed.

This timeline for Addendum XIII would follow the timeline of that of Addendum XII. If approved today for public comment, there would be public comment in February through April. The Board would review that comment in May and be considered for final action in May, as well.

## **FORMALIZE LCMA OCC EFFORT CONTROL PLAN PROMULGATED BY MASSACHUSETTS**

This addendum started out to codify the Outer Cape Cod Effort Control Plan that has been established and is presently in place in the Massachusetts state regulations. The only difference that you would see here from the original plan is that it drops the goal to meet the 20 percent trap reduction. This addendum also proposes to amend the Area 3 Trap Transfer Program per request by the Area 3 LCMT.

Quickly, as to not go into this into detail unless requested by the Board, the Outer Cape Cod Effort Control Plan allocates out traps. There are a series of trap reductions. In the original plan it was 20 percent. They have gone through some of these trap reductions, but we are considering to drop the reductions or to complete them because the most recent stock assessment in both the Gulf of Maine and Georges Bank show that the stock is not overfished, and we are not depleted. There is also incorporated into this effort control plan a transfer program, as well as haul-out periods.

### **CONSIDER TRAP AND TRANSFER TAX FOR LCMA 3**

For Area 3, the Area 3 LCMT proposed altering their transfer program. This program is listed under Addendum IV currently and the most recent regulations. They want to look at altering the current tax as well as looking at the trap cap and transfer programs. This is, one, to allow for some flexibility; and, two, to avoid confusing regulations.

Currently the tax on traps in Area 3 is if an individual has up to 1,800 traps, there is a 10 percent tax; and if you have more than 1,800 traps, there is a 50 percent tax. The proposal is to have 20 percent for all partial transfers, so it would be one single tax. One of the additional reasons for having a single tax that is somewhere in between the two old ones is that there is less incentive to transfer and reduce traps when you have a significantly tax. The LCMT is hoping that this would have more reductions because there would be more transfers of traps.

Then for the transfer tax, Option A is looking at status quo, and that is currently any individual with an allocation less than 2,200 traps can build their business up to 2,200 traps under the transfer program. Remember, this is a trap cap for only the transfer program. It's not an overall trap cap for Area 3. It's only a trap cap for a transfer program. Option B

would be to have the trap cap for the transfer program be 2,000 traps, so any individual with less than 2,000 traps could build up their allocation to 2,000. Are there any questions?

MR. MEARS: One question I have on this proposed addendum would be if the Lobster Advisory Panel had an opportunity to review it; and if so, is there someone here that could give a summary of what comments they may have. Thank you.

MS. KERNS: Harry, in the past we have not asked the advisory panel to review area-specific management programs, especially ones that have come from requests by the LCMT itself. We usually only ask the advisory panel to comment on coast-wide management programs.

MR. AUGUSTINE: Thanks, Brian. This looks pretty clean. I'm over at 4.1.1.6, trap haul-out period. We note that's from January 15<sup>th</sup> to March 15<sup>th</sup>. Has enforcement weighed in on this, and how would we go ahead and determine whether or not these folks had actually pulled their traps during that period of time? Is there any mechanism that will be in place collectively throughout the whole or would it be the LCMA from that area?

CHAIRMAN CULHANE: Okay, Dan has his hand up; I think he can answer it.

MR. McKIERNAN: Pat, I can help you with that. That trap haul-out period is specific to the Outer Cape Cod region, which is fairly close to shore. Our law enforcement officers are patrolling the area. We also have overflights in the area looking for gear, so it's checked.

MR. SMITH: I have a question on 4.1.1.5. It's the bottom of the page that has the graph at the top. Under paragraph C, it says, "Any fisherman whose trap allocation declines below 50 traps after a transfer shall have the remaining trap allocation and the permit retired." I guess I understand that in a big fishery, but I'm not sure I understand why somebody with a 500-pot allocation that decided to transfer most of them but keeps 49 of them, why he couldn't do that. I wonder if a lot of thought went into that and there is an answer for that.

CHAIRMAN CULHANE: Well, again, Dan is the man with the plan.

MR. McKIERNAN: Well, I think that was a component of the original Outer Cape Plan, and we really haven't had a problem with it. When folks want to retain their permit, they stop short. You

know, they keep 50, but a lot of folks just liquidate and turn the permit in.

David Spencer is not here and I imagine he would probably comment on this. One of the concerns I have about the addendum is although the LCMT did meet and supported the Area 3 changes that are in this addendum, I guess I find it kind of amazing, after we just went through all these discussions about transferability and everything is yet to be resolved with data bases and new addendums and explain some very confusing topics; yet, the Area 3 LCMT continues to march forward and write a new rule.

I think this might be the third or fourth rule on transfer taxes, yet there still isn't a program. I just hope that this thing doesn't get confusing for the listeners, depending on where this hearing is going to be held. When I originally had drafted this draft addendum for Toni, I sort of envisioned one public hearing.

It could just be in the Outer Cape because that's where the fishery is. I imagine now you'd probably have to have public hearings up and down the coast. It's just a thought that it just seems ironic that after our previous discussion about Addendum XII that we're putting new transfer proposals on the table.

MR. P. WHITE: Just for a point of information because David Spencer isn't here, but the Campanale Family is here; and I think, if I'm not mistaken, they are members of LCMT 3.

MR. R. WHITE: For clarification, am I reading this correctly that the Commonwealth of Massachusetts is taking care of all the recordkeeping in relation to this?

MR. McKIERNAN: For the Outer Cape Fishery, yes, we've been managing that fishery for three or four years now, and it's been pretty manageable, actually.

CHAIRMAN CULHANE: I did see Roy Campanale's hand go up in the background there. I know he wanted to speak on this issue, so since there seems to be a little lull here, I'm going to ask Roy to come up.

MR. ROY CAMPANALE: I'm Roy Campanale. My brother and I both own four offshore boats and fish out of Point Judith. I'd like to just read a prepared statement in addition to the statement that I read at the last meeting. After reading the proposed Area 3 Transferable Trap Plan justification for

lowering the trap cap once again, this time from 2,200 to 2,000, I believe the plan is insufficient.

I believe it has fallen short for what it is trying to accomplish. For years now everytime concerns about problems such as fishermen building up their trap allocation that are maximum allowed, latent effort finds it way back into the fishery or fewer fishermen are left after some of them sell their allocation, the response by the LCMT has been the same; that is, to lower the trap cap.

It appears that this is the only response they have to a complex issue, and I believe their responses have not come close to being fair or equitable nor does it address or eliminate the problems. I believe the mobile gear sector has already struggled and agonized over similar problems, and maybe that's why they came up with the days-at-sea transferable leasing plan where they used their baseline for the original allocation and other supporting regulations to control effort in a fair and equitable way.

After all these years, the transferable trap plan consists of a top trap cap and anyone below the cap can transfer as many traps as they want. Even with a 2,000 trap cap, fishermen can come up to the limit and latent effort would be the same amount as if you had a 2,600 trap cap. The amount of latent effort or trap buildup that occurs in the industry is the same at either 2,000 or 2,600 trap cap if you anticipate everyone is going to transfer to the maximum allowed as the LCMT justification predicts.

Also, simply put, making everyone who had fished over 2,000 traps come down to 2,000 traps and let everybody below 2,000 traps come up to 2,000 traps does not keep the socio-economics of the industry the same, such as, again, the LCMT background and justification suggests it does. It does not even come close to meeting the Interstate Plan's Number 4, maintain existing social and cultural features of the industry wherever possible; also as the background and justification suggests it does.

I also would respectfully disagree with the background and justification statement. The basis for the purpose for the proposed 2,000 trap cap limits is to cap trap fishing levels on a per-vessel basis to the level similar to those seen in the offshore waters in the 1990's when the Interstate Lobster Management Plan was established.

If you look at the final determination historic participation trap allocation for Area 3, 4 and/or 5, you will see Area 3, there are 39 permits that fished

between 2,035 traps to 5,403 traps. There are 99 permits that fished between 200 traps and 2,000 traps. I do not believe the LCMT statements portray the large diversity which existed in the fishery between 1991 and 1999, the dates that were used to determine Area 3 allocation. 2,000 traps is not what everybody fished.

I believe that some Lobster Board members have an agenda to make the top trap cap of 1,800. It was told by one Board member recently like it or not you will have a top trap cap of 1,800. Well, I don't like it, and my business is not self-sustaining at its current 2,100 cap allocation, let alone 1,800.

The Transferability Trap Plan is being proposed so fishermen can adjust their allocations to fit their needs and at the same time reduce effort by the conservation tax as long as you're under 2,000 traps. Does the ASMFC think you can remove a total of 4,908 traps from our four vessels through the trap reduction plan and it has no effect on our business? These 4,908 traps represent only the traps we ran on our vessels with one crew on each vessel.

The 4,908 traps that we had to reduce is as important to our business as the 614 traps the owner of a vessel who fished 2,000 traps had to reduce. But, through the proposed LCMT Transfer Trap Plan the vessel who started off with 2,000 traps can purchase every one of them back to where he started. On the other hand, we can only purchase a total of 320 traps back. This is not enough to bring our company back to profitability. It is not fair and equitable.

I believe the ASMFC Proposed Transferability Trap Plan does not meet or is consistent with the National Standards 2, 4, and 8 as my attorney has pointed out in the past. I believe it is necessary for the LCMT to take another look at its plan. It should be put in regulations that affect everybody fairly, as well as regulations that control the rate of effort increase and possible latent effort back into the industry.

Just two or three things; I suggest using the baseline of the original allocation. This would eliminate the trap buildup that everybody is concerned about. It would also meet national standards. Control the amount of traps each vessel can transfer every year. It would eliminate the amount of trap buildup all at one time that everybody is concerned about. Also, it would eliminate latent effort back into the fishery. It would at least be under control.

There are a lot of permits out there that are on very small vessels. We definitely don't want to take and

have those transferred onto larger vessels that would put more effort on the resource. Also, if you had transfers only between similar sized boats – everybody is concerned about if you leave the top trap cap high, everybody is going to be taking and trying to get up to those higher numbers, and the smaller guy would be hurt.

If you really want to take and protect the smaller vessels, even at a 2,000 trap cap, the first ones to go are going to be the small guys. If you put in something that would be where transferability could only be between similar sized vessels, this would guarantee the diversity in the industry and would prevent latent effort from the smaller vessels turned into a larger vessel. I would like to ask anybody if they have any question of me, I would like to answer them.

MR. ADLER: Roy, as it pertains to this particular document we're looking at right now, and not at this point revisiting the whole plan system, I'm getting that you don't want – you don't think these latest proposals for an addendum should go out to public hearing; is that where you're –

MR. CAMPANALE: Absolutely.

MR. ADLER: I mean, let's not revisit the whole plan, which you mentioned you want to look at again, because that's not what we're doing here.

MR. CAMPANALE: I know that, but what you do have –

CHAIRMAN CULHANE: I'm going to cut this off here. I don't want this to turn into a back-and-forth between the two of you here. Roy, are you finished with your comments?

MR. CAMPANALE: Yes, I appreciate it.

CHAIRMAN CULHANE: Okay, thank you, Roy. George, do you have a comment?

MR. LaPOINTE: I think I know the answer, but I want a clarification from staff. Did the LCMT 3 proposal – did the proposal on Area 3 come through the LCMT?

MS. KERNS: Yes, and the minutes from that meeting were the annual meeting CD.

MR. ROBERT E. BEAL: Thank you, Mr. Chairman. The question on Addendum XIII and the content; there are two very different issues in the document.

One is very specific to the Outer Cape; and as Dan mentioned earlier, probably one hearing in the Outer Cape, and that one has the potential to be wrapped fairly easily.

Then we've got the Area 3 LCMA that is a little more complicated, and I think it's going to spread out the hearings quite more and need to cover a number of different states. I guess the question is, since we're still development Addendum XII, which has all the details and protocols for transferability, are the caps and other provisions of the Area 3 portion of Addendum XIII, are they as time sensitive?

In other words, is there an opportunity to separate out the Outer Cape Cod issue and leave that as Addendum XIII and revisit the Area 3 trap cap and tax at a later date? I'm not sure what the urgency of those provisions is since there isn't even – you know, it's kind of step-wise process. You have to set up the transferability protocol and then modify the rules for individual areas after the fact as one way to approach it. I don't want to push it either way, but I don't know if Harry could comment on that or Dan McKiernan on the time sensitivity of it.

MR. MEARS: The comments that were just made, in particular Bob's questions, do seem to make sense logistically. We have two very different topics. Relative to implementation of a proposed inter-transferability in Area 3, we still have to get through Addendum XII. So, again, logistically, from my own point of view, as well as hearing comments from others, it does seem that these two could legitimately decoupled and nothing would suffer in terms of what would otherwise be accomplished.

MR. P. WHITE: For the point of discussion, would you like a motion to make a separation in this Addendum XIII to Outer Cape and Area 3?

CHAIRMAN CULHANE: I think I would like that. I think I'd like to hear from Dan first on this. He had his hand up and I think that might be order.

MR. MCKIERNAN: Just briefly, I was asked about the sensitivity of timing. It is important for us to take this issue to hearing to get Board approval in May so that we can -- or not be held to the July 1<sup>st</sup>, 2008, deadline for trap reductions, if that's the final decision of the Board. So, for me it is time sensitive, and I would like to see it be approved today for Outer Cape.

CHAIRMAN CULHANE: I know Dan came to us with this at the last meeting, and obviously it's something that was important to him. I'd like to see

it get moved forward and not get bogged down by this. If somebody would like to propose a motion to leave the Outer Cape portion in and take the rest of the LCMA Area 3 out, I think that would be in order.

MR. P. WHITE: I'll make that motion and I guess I'll leave it up to the staff as to how they want to word. We could either have an Addendum XIII and XIV or just have the removal of the Area 3 portion of Addendum XIII of Amendment 3.

CHAIRMAN CULHANE: Okay we have a motion by Pat White; seconded by Dennis Abbott. Eric.

MR. SMITH: Thank you, just a comment on the motion. I'm searching for what we hope to accomplish by delaying going to public hearing with the Area 3 proposal. I mean, I understand Roy disagrees with it, and he has been fair and up front with his disagreement, but we also have the LCMA that put this thing forward after they went through whatever deliberation they did.

If there was a reason to delay it that we need to fix something, that's fine. Otherwise, we're just going to have differences of opinion come forth in the public comment period, whether we get it in the spring in this one document or later on for Area 3 in a separate document. I don't know what that solves, so what is the defect that we will fix by taking Area 3 out of here?

CHAIRMAN CULHANE: George, do you want to speak to that?

MR. LaPOINTE: If I could. I think one of the things that would be worth going back to the LCMT on is the issue of effort shift, because we certainly found this was the case in Maine when we went down to 800 traps and didn't prevent a buildup to lower numbers. We didn't, in fact, reduce effort; we shifted it. I think it would be worthwhile to say what do you about – what are your plans for – or, will there be a net decrease if, in fact, effort just shifts from larger operators to smaller operators? Because if that exists, we aren't accomplishing the goal of reducing effort.

MS. KERNS: The Area 3 LCMT's trap cap for the transfer program, we have to remember that this trap cap is only for a transfer program. It's not an overall trap cap on the area. The trap cap for the area is 2,600 traps, but because we went forward with historical allocation, that trap cap no longer really applies anymore.

When all of the trap reductions have been completed, in my discussions with David Spencer, who is the LCMT Chair, said that there wouldn't be any individuals with more than 2,000 traps. I don't know if that is also helpful information.

MR. LaPOINTE: I think it's helpful and if you think that the question of effort shifts have been answered, I think it gets to Eric's question about what are we going back to ask them about. But, the question of – in the end is there going to be a net decrease in the number of traps or a net shift in the number of traps among different size operators?

MR. P. WHITE: Probably as to what both Eric and George are talking about, I think would it not be wise not to exclude that from this, but to create either two addendums or some other way of addressing this as two separate issues? I think that was what I was trying to get at the first time, and I don't think we've resolved the question of effort shifts and that's why I think this discussion should go forward for Area 3. I don't want it excluded so I guess I'm looking to Toni for a better way of putting this, and I don't how to do it. If you do an addendum –

MR. LaPOINTE: Just split the two issues into two addenda.

MR. P. WHITE: Okay, I think I'd like to modify my motion to split this into two different addenda.

CHAIRMAN CULHANE: Okay, before we get into that, Dan has his hand up and maybe he can help us out here.

MR. P. WHITE: Well, if that's true, I need a second to approve it.

CHAIRMAN CULHANE: Okay, I'll just follow on what Pat said. He talked about the need to further this discussion. I think that's the problem is that the Board is having a discussion and really can't get to the details because the LCMT Chair isn't here, David, specifically. Bonnie is not here.

If the Board has substantive questions, shouldn't we ask them to lay out the rationale a little bit better than what was presented to us in a memo that I don't have because I didn't bring my CD from October. Maybe we should just postpone this action until May when those parties could come and maybe discuss this substantively.

MR. P. WHITE: The other side to that point would be if we did separate it, you could still from today go

forward with the Outer Cape and then have the discussion of the Addendum XIV in May.

MR. ADLER: To this point right here, the idea is that if this part of Addendum XIII were to go forward, nothing of it can happen until Addendum XII is resolved because it comes after Addendum XII in some form gets passed. Otherwise, it's just sitting there.

MR. P. WHITE: I think what we need, then, is a period after this so that we can approve, through this motion, the Addendum XIII and go forward with further discussions for Addendum XIV, which includes the Area 3. If you put a period after that, would that not say, then, we can vote on Addendum XIII to go out for public comment? Then Addendum XIV, which doesn't say what we're going to do with it, is a separate sentence.

CHAIRMAN CULHANE: Put a period right where the cursor is now, you mean, right after "comment".

MR. P. WHITE: Yes. Does that cover it, Eric?

MR. SMITH: If I may, Mr. Chairman, you have that language in Line 1. I think you need the period after "OCC", right where it is now, and then the second sentence needs to be Addendum XIV will be continued under development; or, don't say anything because we're going to continue development of it.

CHAIRMAN CULHANE: Toni has a question here.

MS. KERNS: Just for clarification purposes so I can go back to David, the LCMT Chair – and Bonnie is not here because she had a death in the family. She was supposed to be here. She did intend to be here – that the Board would like further justification for the changes in the trap program outside of those identified in the addendum; specifically looking towards shifts in effort.

CHAIRMAN CULHANE: Okay, we have a motion. Is there any further discussion on this motion? Are you ready to call the question? Joe wants me to read the motion: Move that the Board approve for public comment Draft Addendum XIII, to include only the provisions concerning the LCMA Outer Cape Cod. Motion by Pat; seconded by Dennis Abbot.

Do we need time to caucus? Okay, all in favor, raise your right hand; opposed, same sign; abstentions; null votes. The motion passes. Okay, now we're ready for Penny to give us a TC report on stock trends.

## TECHNICAL COMMITTEE REPORT ON STOCK TRENDS

MS. PENNY HOWELL: I've prepared a very quick update, which I'm going to do even more quickly, of the status of the three stocks. This update will involve only a review of landings and research trawl abundance indices, so it's just a snapshot. The landings in the research trawl abundance indices were used to compute relative stock size and a relative fishing rate, so that's what is the crux of the whole analyses.

These relative stock size and relative fishing rates, in order to put them into context, they will be presented as a percent deviation from their long-term median, which is 1982 or 1984 through 2003. I want to make it clear, because the TC feels strongly about this, that these long-term medians are a separate calculation and not the same as what was done in the last assessment.

Starting with the Gulf of Maine, the landings have increased substantially over the time series. I presented a little bit of a breakdown. The black at the top is totals, but the red line at the bottom is Area 514, which is Cape Cod Bay, just to make the point that at the southern end of the Gulf of Maine, landings have not shown the same trend as the rest of the stock area.

We have two indices available to assess this stock. The green line is the NMFS Offshore Trawl Survey. For the last six years, starting in Year 2000, the Maine Inshore Index was included and the two indices were merged. The red line is the Massachusetts North of the Cape Trawl Index, and the only point to make here is that it was showing a decline where the other index was not, except for in 2005 and 2006 where it looks like the numbers are improving somewhat.

When you put those two together, the black line shows the estimated relative stock size. Again, so this is clear to everyone, if the stock showed absolutely no change in size, it would be a flat line right along that X axis; in other words, zero change from its long-term median. Above the line means that it's above its long-term median by some percentage. Below the line means it's below its long-term median by some percentage.

So, looking at the black line, which is stock size, you can see that the stock size is still above its long-term median. It's wavered a little bit, but I wouldn't take

these numbers to be absolute because it's a rather rough estimate. The fishing rate has stayed below the long-term median except for a little excursion in 2003 and 2004, but then dropped, so more or less the fishing rate is close to its long-term median. Again, these numbers are very rough.

Moving to Georges Bank, the landings were very, very steady from most of the historic period until the last few years. It jumped up fairly noticeably. We only have one index for this area, which is the NMFS Research Trawl. The indices are still improving, although the last couple of years didn't look so good.

So if you put those two together, you've got a stock size that was wavering around its long-term median with no change until the early part of this century, and it jumped up and then dropped back. It's still above its long-term median. The fishing rate was wavering around its long-term median, dropped low, but then in the last couple of years has gone above its long-term median. That's something that our assessment will be looking at more carefully.

Okay, moving to Southern New England, the lobster landings peaked in the mid-nineties and then dropped noticeably and have stayed very low since 2003. We have several indices, which is always nice. They're not quite as crazy as shown here. I didn't want to spend a lot of time standardizing them all. All the indices increased in the nineties and all of them have dropped since 2001, and then there is a modest increase in the blue line, which is Rhode Island. Rhode Island is the only that's showing a little bit of improvement.

If you put that all together, the black line paints a pretty sorry picture for the stock size, which was at historic highs, so in order to put this in context you have to make the point that the stock had built to a very high amount over its long-term median but then has shown equally drastic decline and has shown absolutely no recovery stock-wide.

The fish rate has wavered around its long-term median and is presently below its long-term median. The only bad news here is the fishing rate – the removal rate has declined, but the stock, in recent years, has shown no response stock-wide. That's it.

CHAIRMAN CULHANE: Thank you, Penny. Are there any questions for Penny on this? Vince.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thanks, Mr. Chairman. This is a question, but I'm sure whether it's for the technical committee or maybe to somebody else, Mr. Chairman. It does

have to do with the condition of the stock. We have a major project going forward to complete a stock assessment at the end of this year.

In that stock assessment there are some critical dates for the folks working on that, milestones, if you will, in terms of pulling data together. Now I've heard reports about some difficulty right now in trying to resolve discrepancies in that data between state data and federal data. Number one, I guess it would be good to hear whether or not there is a concern that this difficulty is going to jeopardize the timeline.

Number two, if, in fact, folks are working on that, perhaps to hear maybe a commitment from the agencies involved that they're endeavoring to address this. I'm not sure whether this goes to the National Marine Fisheries Service or to the Chair of the technical committee, Mr. Chairman.

CHAIRMAN CULHANE: Well, I certainly can't answer it, so would anybody else volunteer to take a shot? Toni, please.

MS. KERNS: The discrepancy is between the state of New York's landings and those that have been supplied by the dealer weigh-out from the National Marine Fisheries Service. Currently the New York staff is going through cell by cell looking for those discrepancies. We are working with New York, ACCSP and folks over in the Fisheries Service to reconcile that data.

The next critical step is to have a meeting with those three agencies to come to conclusion on that data. The sooner we can have that meeting, the better it will be. If we have delays in conducting that meeting and coming to agreement, the assessment will not be able to be produced by the annual meeting. Unless that happens, we cannot, so we just need – we've gotten an e-mail commitment on working through this, and now we just need to have that e-mail commitment shown in provision through a meeting.

MR. NELSON: Thanks, Mr. Chairman. Kind of having gone through this on our state level, I'm hearing a lot of the same words that the staff has provided and was providing with us when we went through it. So, I guess the question really is are our federal partners okay with moving ahead and fixing this problem? How are they doing over there I guess is what we're asking?

MR. MEARS: I do know going back two or three years ago there have been questions raised about differences between the statistics maintained and

made available by NMFS based on dealer weigh-out data and similar data collected by the states. I do know there has been at least two letters that has recommended the subcommittee approach, the peer-review approach to come up with possible solutions.

I think what would help this discussion most, it seems as though the endpoint or the current point is waiting for a meeting to happen. I guess I might ask, from, Toni, your perspective, if you have one, or whoever is appropriate, who is arranging the meeting and has the time been established, because that seems to be the critical point right now in order to move forward.

MS. KERNS: I am arranging the meeting through ACCSP, and those dates are thrown around in the process. I think the important part is to have – the critical part is to have a fast response time to that meeting to move forward and not to lag out over time as has happened in the past, I guess, would be the best movement forward and commitment.

MR. MEARS: I'm assuming there's an e-mail saying let's have a meeting and you've thrown out some dates, probably? Yes, okay, and you're waiting for a response? Okay, let's talk after the meeting and we can move forward if you don't yet have a response.

## **STATE-SPECIFIC CONSERVATION EQUIVALENCY PROPOSALS**

CHAIRMAN CULHANE: For the record, Toni said yes. Okay, I think we're ready to move on to Number 7 on the agenda now, State-Specific Conservation Equivalency Proposals, and I believe Dan and George are going to fill us in here. Thank you. Dan, do you want to start?

MR. McKIERNAN: Could George go first?

CHAIRMAN CULHANE: Sure.

## **MAINE PROPOSAL**

MR. LaPOINTE: Thank you, Mr. Chairman. This was the conservation equivalency proposal that Maine submitted for technical committee review based on our dealer reporting and what areas they report to. In the conservation equivalency proposal it has dealers reporting by assigning landings based on dealer location relative to adjacent statistical area.

The equivalency is based on the near-coastal nature of the Maine fishery. It's consistent with past

landings assignments used in the assessment process and is substantiated through an analysis of two monitoring programs from the year 2003 through 2006. If you go to the proposal at the back end, under the conclusions it says the conservation equivalency for dealers reporting by dealer port location is equivalent with that for a statistical area, and it goes through the justification, but that's the nub of it. I would make a motion for approval of the conservation – well, we should ask for the technical committee review; shouldn't we?

CHAIRMAN CULHANE: Let's take the proposals and then Penny has a technical committee review and then we can take up the motion. Go ahead, Dan.

### **MASSACHUSETTS PROPOSAL**

MR. McKIERNAN: Briefly, what Massachusetts DMF found, looking at the intent of Addendum X, was the technical committee's need to try to attribute lobster landings to the statistical areas. Since the Massachusetts Annual Recall Log specifically does that not on a trip level basis but on an annual recall level basis, we felt that until we go to trip level reporting at 100 percent, which is one of the goals of Addendum X eventually, this would suffice for the technical committee. I did have a chance to talk to our folks and I think the TC has bought into that.

CHAIRMAN CULHANE: Okay, and I believe the TC is ready to review.

### **TECHNICAL COMMITTEE REPORT**

MS. HOWELL: Yes, the TC reviewed the proposal from Maine and Massachusetts and found the proposed alternative methods acceptable. I'm glad Dan made the point that we found these acceptable in lieu of what we would really love to have, which 100 percent reporting on a trip level. The proposals will meet our data needs for the purposes of the assessment because what we need to do is assign all the landings to stock units, and that's what these proposals will be able to do. I'd like to add, since I have the microphone, that the TC continues to emphasize the importance of the recommendation to the Board in May of 2007 regarding harvest reporting. At that time the TC presented analytical results demonstrating that landings data will be inaccurately expanded to total harvest if less than 30 percent of the actively fishing harvesters report their landings.

Expansions based on less than 25 percent reporting, we feel would be unacceptably imprecise unless all licensed harvesters are carefully stratified by area fished, such as in Maine with the zoning, or fishing history, such a high effort, low effort or inactive. It is strongly recommended that regardless of the percent chosen, that mandatory reporting be randomly distributed over all these strata and that 100 percent trip level reporting still be our goal.

MR. AUGUSTINE: Thank you, Mr. Chairman. What mechanism would we have to use or what will we have to do as a Board to assure that the TC's recommendations is adhered to in this particular case? It's obvious they need the information. What do we do; do we just say we want to do it, we want them to do it? Do you need a motion, Mr. Chairman?

MR. LaPOINTE: You know, the technical committee's two other recommendations are consistent with what they've told us before. That was the argument that we had before Addendum X, and I hope we don't have to go through that again. The issue before us is the two conservation equivalency proposals; and if it's appropriate, I would make a motion that both be approved.

CHAIRMAN CULHANE: I accept that motion; do we have a second for it? We have a second from John Nelson. Discussion on the motion. Eric.

MR. SMITH: Toni, can you remind me that in Addendum X – it doesn't come about in this documentation what was on the CD or handed out by the technical committee because I think it's a subset dealing with conservation equivalency. But, the basic addendum essentially says if a state has 100 percent fishermen reporting so that they're getting areas that way, then they don't have to make their dealers report area; is that correct? Yes, okay, I thought that was it.

MS. KERNS: It wasn't in the addendum, but it's something that we verbally agreed to in the discussions. It was an intent of that motion.

MR. SMITH: Do we have that written down somewhere?

MS. KERNS: It's in the discussions in the minutes.

MR. SMITH: So we have our institutional memory intact, thank you.

MR. AUGUSTINE: A follow-on, are you actually getting 10 percent reporting or more right now?

MS. KERNS: Ten percent reporting went into effect January 1, 2008, and we are getting compliance reports March 1<sup>st</sup> to review and look at that, but to my knowledge all states are implementing at least 10 percent reporting.

MR. AUGUSTINE: Again, the question is, is 10 percent enough? It's a dumb question; it's rhetorical, I know, but, please, Penny.

MS. HOWELL: I'm not sure how to answer the question "enough", but the stratification of the licensing is what is absolutely vital, and it seems like the method that Maine and Massachusetts have in place is adequate, and I emphasize "adequate" for now.

CHAIRMAN CULHANE: Okay, we do have a motion on the board. Any other discussion before we call the question? Okay, move to approve the conservation equivalency proposals for Addendum X from Massachusetts and Maine both. Motion by Mr. LaPointe; second by Mr. Nelson. We have a question from Mr. Smith.

MR. SMITH: Is this open-ended or is this for the coming year because we're already into '08? There seems to be a little bit of an uncertainty on what is the right thing to do. What in reality is the only thing we can do at this time, and where would we really like to be eventually? Eventually we'd like to with 100 percent reporting, but we're not going to get there any time soon in Maine and Massachusetts.

The next level is, well, what do we need to give us good statistical confidence, and that might be 25 or 30 percent of fishing reports, but we're only getting 10 percent. I don't mind voting for this for this next year because it's just the best we can do at this time, but two, three or four years from now we might regret the fact that we just gave it an open read.

I would be more comfortable if this was for a year, and then in October at the annual meeting, for example, we – that's probably too late for them in terms of trying to implement anything, but maybe we do it for two years and then during '09 we consider what we really need and maybe come back at it with a renewed effort, and say, "Hey, we've got to jump start this again because we're not quite getting it."

If we do it in 2009 we will have the next assessment information, and maybe that will help us. If it's not too late, I would ask the maker and the seconder if you would accept this for a two-year period, '08, '09?

MR. LaPOINTE: I don't and here is why. The question with the conservation equivalency isn't about 10 percent or 30 percent. It's about whether, in Maine's case, we are going to get our reports based on where the landings are as opposed to the NMFS statistical area, and so I envision that being sufficient and moving forward. We can address the other question and see how we're doing statistically, but that's not pertinent to this motion, I think, Eric.

MR. SMITH: Okay, if I may, you're basically saying that allocating landings by statistical area, according to the geographical location of the dealer, if we change nothing else, that would be good enough for showing how the allocation – how the landings fell by dealer. The technical committee said that narrow question is okay, so I agree with you.

CHAIRMAN CULHANE: Okay, are we ready to vote? All in favor of the motion, raise their right hand; all opposed, same sign; any abstentions, 2 abstentions; any null votes. The motion passes. Before we leave this discussion, Toni had one more thing she would like to add.

MS. KERNS: In the discussions of reporting and data that the TC had, it came about that the TC is very concerned with sources of funding for state lobster data. The major portion of that funding was coming from money from lobster health that was, I believe, an earmark that was championed by Senator Snowe. That funding will end in 2008.

The additional large portion of funding for lobster data was the ACFCMA Plus-Up money, which can be used through, I believe it's May of 2009, but I believe that each of the states will plan on using that money this year for the ventless trap survey and some other port sampling. The states of Maine, New Hampshire, Massachusetts and Rhode Island will lose probably 85 if not all of their lobster data collection funding.

Unless new sources of funding can be found, we won't be able to collect enough information to complete any further assessments beyond the one at the end of this year. The TC is working on a more thorough document outlining where the funding came from, what it was used for, and what kind of options that we may have down the road and also looking to the Board to have information on sources of funding down the road.

But, it's something that I wanted to make you all aware of now because it is very critical, as you know, to have data collection to be continued on as a fluid

time series. If we lose years in the time series, such as the ventless trap survey, all of the funding that we've put forward will not be useful because we won't have the time series.

## **MASSACHUSETTS CONSERVATION EQUIVALANCY PROPOSAL**

CHAIRMAN CULHANE: Okay, now we're ready for Agenda Item Number 8, and this is the Massachusetts Conservation Equivalency Proposal. I believe Dan is going to handle that.

MR. McKIERNAN: Thank you, Mr. Chairman. The memo was actually quite brief. It's just a page and a half. Attached to that is our current regulations on v-notching, as well as a technical report that we're citing by Brian DeAngelles of NOAA. It has to do with what we think we're zeroing in on regarding the degree to which the 1/8<sup>th</sup> inch standard for v-notch possession would approach the conservation benefits of a zero tolerance rule.

I can report that I just came from Bill Adler's annual meeting of the Massachusetts Lobstermen's Association, and this was the number one topic of discussion. With the growing popularity in the frequent use of this 1/8<sup>th</sup> inch measure for enforcing the v-notch possession rule, I think the fishermen and the officers feel that it actually has some benefits in terms of establishing a common standard that both parties, the enforcer and the fisherman both know that they're in compliance or not.

There is growing interest in Massachusetts, especially among the Area 1 lobstermen, to adopt this standard. So if you read this document – and I'm not asking you to read this during the meeting, but take it back for further discussion at the next meeting. We believe that based on the technical analysis every lobster that had molted once is protected by the 1/8<sup>th</sup> inch and 75 percent or more are protected the 1/8<sup>th</sup> inch after molting a second time.

That's very close to the original goal of zero tolerance v-notching which was two molts. I describe in the memo that we also feel that there is a gray area; those lobsters that may or may not be protected by the 1/8<sup>th</sup> inch and to a gray area where fishermen and enforcement officers don't feel comfortable either taking it or enforcing it.

We think that given the multiple recaptures we have in the inshore fishery that quite often that lobster will be taken again because it will be recaptured maybe by a fisherman who is a little bit more of a risk taker

or an officer enforcing that rule is less confident about whether that case holds up in court.

I think the 1/8<sup>th</sup> inch standard is a good one. We'd like to go to rulemaking and we'd like to get this in place by the summer. Our industry would really like to see this. I did speak Terry Stockwell before the meeting about showing this to the LCMT for the sake of good relations among the Area 1 lobstermen.

I think that's a good idea. There is an Area 1 meeting scheduled for March 25<sup>th</sup>, but in the interim if you'd like to show this to the technical committee, we'd be happy with that as well. We could begin our rulemaking process after we hear from the TC and the LCMT, but it's something that's very popular in Massachusetts, and we think we've done our homework to describe the benefits and the impacts. Thank you.

CHAIRMAN CULHANE: Okay, Dan, we will refer this to the technical committee. Pat, did you have a comment.

MR. P. WHITE: Yes, I'm not going to get into the enforcement end of it, Dan, but for my own information, I guess, if I may, Mr. Chairman, ask if it takes two years for a quarter-inch V to come out, then why wouldn't at one year an 1/8<sup>th</sup> of an inch still be in there? Why aren't you losing close to 50 percent of the ability to reproduce with that?

MR. McKIERNAN: Well, it's two molts, not two years. In the case of a reproductive female that's four years. Because three-quarters of the lobsters that are molting a second time are protected by the measure, it's only 25 percent of that group. We believe there is a lot of re-notching that goes on in the industry, so if we were only using the model and assuming notching once and allowing those lobsters to live on through one molt and two molts, I think the discussion would have some basis.

But, given the amount of re-notching that we see going on and what we think is somewhat inconsistent standards applied on the waterfront by fishermen and by some of the wardens, we think it's a wash or it's so close that I think for the good of the order on the waterfront it's a rule that makes sense.

CHAIRMAN CULHANE: Okay, so this will go to the technical committee for review and also to the law enforcement committee. Thank you for that report. Now we come to an issue that's very near and dear to my heart. Last night watching the heroic efforts of the New York Giants, I nearly suffered a heart attack in the final minutes.

I thought, "Oh, my God, there is no vice-chairman for the Lobster Board." I would like the Board to consider election a vice-chairman. I believe George had his hand up first. Let's go to George.

### **ELECTION OF VICE-CHAIR**

MR. LaPOINTE: I do have my hand up, but if it involves a replay of last night, I might tear this piece of paper up, Mr. Chairman. I would like to nominate Mark Gibson as the vice-chair of the Lobster Board. I do that knowing he is not here but that staff has checked so he is being victimized with his concurrence.

MR. AUGUSTINE: Thank you, Mr. Chairman. I'll move to second that and close the nominations and cast one vote. Thank you, Mark Gibson.

CHAIRMAN CULHANE: Without objection, especially not from Mark, thank you. We have other business. Pat, do still have the issue that you want to bring forward?

MR. P. WHITE: Everybody has been handed out what it is that I wanted to talk about. It is included in some of the discussions that we've had already today on 4.1.4 and 4.2, so I won't get into it now. I would just like it to be on the table and be part of the discussion that we have for Addendum XIV and it go before the LCMTs.

CHAIRMAN CULHANE: Okay, John, do you have a question?

MR. NELSON: I would question whether or not this is appropriate to do because we had discussed whether we were going to divide Area 3 up previously. I suspect this is a variation of what was done before, and I think the Chair, at some point, needs to take a look at the details associated with this and determine whether or not the Board has already voted on this and move beyond this. You don't have to do it right now; I'm not asking that.

We have a process in place which we try not to revisit what we've already decided on. I just want to make sure we've taken a look at this to make sure it's not another version of what we've already decided not to do. Thank you.

CHAIRMAN CULHANE: Okay, I'll ask the staff to review this. This is somewhat of a new proposition to me, but I do understand it's slightly different than what we looked at before, but I'll ask staff to review

it and we'll take a look at it. Pat, was there something more that you wanted to say on this?

MR. P. WHITE: No, I won't take up anymore time at this point. I'll be happy to talk with you and the staff later.

MR. HIMCHAK: Mr. Chairman, going back to the conversation equivalency; it went rather quickly and I didn't get my hand up in time. I was feeling rather confident on Addendum X, the requirements, because we will have approximately 90 percent of our fishermen reporting effort by statistical area under the VTR system.

I got confused over the dealer exemption, and I'm wondering if I need to submit a state conservation equivalency on the dealer issue. But, we will have at least 90 percent of the fishermen actually covered under the existing programs, and I'd just like to bring that point up. I'll talk to Toni maybe later about the dealer reporting. This is ironic. We are starting our first-ever sea-sampling program on lobster fishing.

We have funding from the Atlantic Coastal Cooperative Statistics Program to start the at-sea program this year, but typically they use it as the ACCSP provides seed money to get programs up and running and not to continue them every year thereafter. So, in the funding source, when you start looking at funding sources for state programs for at-sea observer coverage, please consider us because we're finally up and running. We're only guaranteed for one year. Thank you.

### **OTHER BUSINESS**

CHAIRMAN CULHANE: Okay, thank you, Pete. Any other business?

### **ADJOURN**

Okay, unless there is objection, this meeting is adjourned. Thank you.

(Whereupon, the meeting was adjourned at 5:45 o'clock p.m., February 4, 2008.)