PROCEEDINGS OF THE

ATLANTIC STATES MARINE FISHERIES COMMISSION

AMERICAN LOBSTER MANAGEMENT BOARD

The Westin Alexandria Hotel
Alexandria, Virginia
February 4, 2015

Approved May 4, 2015

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Board Members

Terry Stockwell, ME, proxy for P. Keliher (AA)
Steve Train, MD (GA)
Doug Grout, NH (AA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)
G. Ritchie White, NH (GA)
William Adler, MA (GA)
Jocelyn Cary, MA, proxy for Rep. Peake (LA)
Mark Gibson, RI, proxy for R. Ballou (AA)
Rick Bellavance, RI, proxy for Sen. Sosnowski (LA)
David Simpson, CT (AA)
Lance Stewart, CT (GA)
James Gilmore, NY (AA)
Emerson Hasbrouck, NY (GA)
Katherine Heinlein, NY, proxy for Sen. Boyle (LA)
Tom Baum, NJ, proxy for D. Chanda (AA)
Tom Fote, NJ (GA)
Roy Miller, DE (GA)
John Clark, DE, proxy for D. Saveikis (AA)
Bill Goldsborough, MD (GA)
Thomas O'Connell, MD (AA)
Rob O'Reilly, VA, proxy for J. Bull (AA)
Peter Burns, NMFS

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

Ex-Officio Members

Staff

Robert Beal
Toni Kerns
Kirby Rootes-Murdy
Marin Hawk

Guests

Spud Woodward, GA (AA)
Kelly Denit, NOAA
Michael Ruccio, NMFS
Michael Armstrong, MA DMF
Dan McKiernan, MA DMF
Craig Weedon, MD DNR
Rachael Maulorico, VMRC
Sally Roman, VMRC
Jeff Deem, MA FMC
Meghan Lapp, Seafreeze, Ltd.
Raymond Kane, CCCFA
Joseph Huckemeyer, Hyannis, MA

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Edison Ballroom of the Westin Hotel, Alexandria, Virginia, February 4, 2015, and was called to order at 11:20 o'clock a.m. by Chairman Dan McKiernan.

CALL TO ORDER

CHAIRMAN DANIEL McKIERNAN: Let's start the Lobster Management Board Meeting. My name is Daniel McKiernan from the Commonwealth of Massachusetts. I'm the chairman and I will be chairing today's meeting.

APPROVAL OF AGENDA

CHAIRMAN McKIERNAN: The first item of business is approval of the agenda. Are there any changes needed to the agenda? Seeing none;

APPROVAL OF PROCEEDINGS

CHAIRMAN McKIERNAN: Can I can get approval of the proceedings from the October 2014 meeting? Bill Adler, motion to approved proceedings; seconded by Emerson.

PUBLIC COMMENT

CHAIRMAN McKIERNAN: Next is public comment. Is there anyone who would like to speak on any of the items that are not on the agenda today? No public comment; no one waiting to speak.

DRAFT ADDENDUM XXIV FOR PUBLIC COMMENT

CHAIRMAN McKIERNAN: Number 4 on the agenda is consider review and approval of Draft Addendum XXIV for public comment.

It has to do with the reconciliation of some of the rules concerning transferable traps for Areas 2, 3 and the Outer Cape. This is an effort that we've been working on behind the scenes for many weeks and months and years. It is an ASMFC attempt to improve the regulations to match up with recently enacted federal regulations. I'm going to let Marin Hawk speak to those.

MS. MARIN HAWK: This is Draft Addendum XXIV for board review. If you recall, the federal plan recently released their final rules for trap transferability; and so federal and state trap transferability plans are not consistent. Draft Addendum XXIV was initiated to ensure consistency between these two plans.

This is the timeline for Draft Addendum XXIV. The current step is February 2015. The board will review this draft and make any necessary changes. Pending approval for public comment, it would then be released for public comment. There are three different issues that this draft addendum deals with.

The first is a conservation tax. The commission plan has a 10 percent conservation tax on full and partial business transfers. However, the federal plan that was recently released taxes only the partial business transfers. The federal support for that was the transfer tax on full business transfers was not necessary to prevent the activation of latent effort and that the current regulations provide sufficient controls for that latent effort.

The two options for this issues is Option A, status quo; the commission will keep the 10 percent conservation tax on both full and partial business transfers and Option B, which is to remove the conservation tax on full business transfers. Issue 2 deals with trap increments. In the federal final rule the trap transfers may be processed in ten-trap increments. The state plan has a variety of different transfer requirements for each different management area.

The federal regulations allow for fewer traps to be transferred at one time; thus allowing more flexibility for a federal permit holder in the trap transfer process. The two options for this issue are Option A, status quo; the trap increments for each management area remain the same. Those are outlined in Draft Addendum XXIV.

Option B is the trap transfer increment of ten traps for all areas where trap transferability programs exist. Issue 3 deals with dual permit transfers. Currently in the commission plan dual permit holders, which are a state and federal permit holder for the same area may only transfer traps to a dual permit holder of the same state.

The federal plan allows any federal lobster permit holder to purchase federal trap allocation from a federal lobster permit holder with a qualified allocation in Area 2, Area 3 or the Outer Cape. Since Draft Addendum XXIV has been released, there has been a slight change in the language in that addendum; and so I just wanted to read this into the record.

For the dual permit holder language, this paragraph will be inserted, "If a dual permit holder chooses to purchase federal trap allocation from a dual permit holder from another state, only the federal allocation will transfer, so the buyer must also purchase state allocation from a permit holder in his or her own state to align the federal and state allocations.

"If the state and federal allocations do not align, the permit holder is subject to the more restrictive of the state or federal allocations. It is recommended that states submit transfer rates and rate of trap attrition in their annual compliance report. The PRT will review these annually and provide a report to the board. If the board views the consolidation pattern as problematic, it can propose corrective actions at a subsequent meeting." So, again, that is just some language in the addendum.

CHAIRMAN McKIERNAN: Just to clarify, in the addendum this is Page 7, the second paragraph under Option 2. What Marin just read replaces that paragraph in its entirety. This was based on conversations that I've had with folks at the National Marine Fisheries Service. As we move forward to create these common rules, we've been getting some very useful feedback at some informal meetings.

Recently we were at the Massachusetts Lobstermen's Association and we presented a lot of this to the industry. We have gotten some good feedback. We've gotten some excellent questions and we feel that this really does need to be clarified. Why don't we take any questions on the three issues that are in this addendum; that being the elimination of the conservation tax when fishermen sell their whole businesses; the trap transfer increments; and then this new language?

Are there any questions on any of this? All right, thank you very much. With this replacement language, we would be looking for a motion to approve this addendum as drafted to go to public comment. I don't think we intend to hold formal public hearings on it. We could if someone wanted to have a hearing in their state; but in Massachusetts I think we would just hold a public comment period. Bill Adler.

MR. WILLIAM A. ADLER: I'll make that motion; but this changes what page, did you say?

CHAIRMAN McKIERNAN: Bill, this changes Page 7 under Issue 3, Option 2, second paragraph in its entirety. If you want a little bit of explanation, I can give you that.

MR. ADLER: **Well, I was just going to make the motion to approve the Proposed Addendum XXIV as amended and approve it for public hearing. Is that what you need?**

CHAIRMAN McKIERNAN: Yes, thank you. Can I get a second on that motion; yes, Tom Baum from New Jersey. All right, any discussion? Steve Train.

MR. STEPHEN R. TRAIN: Mr. Chair, I just have one question. I wasn't sure I fully understood as I was thinking here. We're eliminating the tax on the total business transfer. Would that include a second permit that had banked traps?

Would that be part of the business transfer or is that a separate permit? That's the only thing I'm not sure about.

CHAIRMAN McKIERNAN: If an individual obtains a second permit with trap allocation, he can do that without having a transfer tax from the former holder to him. When he goes to move traps between those two permits, they would be taxed. Any other questions?

The motion is to approve Draft Addendum XXIV for public comment contingent on changes discussed during the board meeting. Motion made by Mr. Adler and seconded by Mr. Baum. Should we take a vote? **All in favor of the motion as approved; any opposed; any abstentions; any null votes. It passed unanimously**. Toni Kerns would like to speak.

MS. TONI KERNS: Based on what you just said, Dan, then is it the intention just to have this out for public comment for 30 days and not hold hearings in states since NOAA Fisheries recently also went out for comment on this as well as the committee did receive comments when we originally put these measures in place; some of them.

CHAIRMAN McKIERNAN: I think so, Toni. Is there anyone in the affected states that would like a public hearing? I'm looking at Mark Gibson.

MR. MARK GIBSON: We will have an opportunity to comment through the process that was just outlined.

CHAIRMAN McKIERNAN: Yes; thank you. Toni, yes, just the public comment period.

LCMA 5 REQUEST FOR REVIEW OF THE SEASON CLOSURE

CHAIRMAN McKIERNAN: All right, next on the agenda is review and consider LCMA 5 request for a review of the season closure approved in October. Tom O'Connell, do you want to speak to that?

MR. THOMAS O'CONNELL: Thanks for this opportunity. What I'm specifically going to request is a reconsideration of the action this board took in October, which established a new closure area for LCMA Area 5 to be April 29th through May 31st. The reason I'm asking for reconsideration; as you can recall at the last meeting we were responding to a technical committee evaluation of Addendum XVII, which required a 10 percent reduction in Southern New England stocks.

Based upon that advice from the technical committee, we learned that Area 4 and 5 were not achieving the 10 percent reduction; and therefore options were reviewed. We came into the meeting to make the argument that the overage in LCMA 5 was minimal and would cause significant impact with little conservation benefit to the stock. You all should have received a memo we put together.

The inaccuracy at the October meeting was when I asked a question about LCMA 5's overage. Staff responded that the overage was greater than 30,000 pounds. That in fact turned out to be the total harvest for LCMA 5; and the overage was actually 1,100 pounds. We are requesting reconsideration with the goal of maintaining the February/March closure that was approved in Addendum XVII.

I will say that Maryland does not have significant harvest nor number of lobster harvesters; but going to a May closure is going to have about a $25,000 impact. That doesn't sound like a lot; but it is going to happen to just a couple of individuals. This fishery is very important to them. It is also going to impact our lobster fishermen in Area 3, which fishes in the Area 3/5 overlap.

Because of enforcement and because of that overlap, they will no longer be able to land lobsters during the month of May as well. There is also some economic impact bycatch that may not continue with this closure. I just wanted to make sure the board was aware about that. We just had a conversation about

economics and the importance of the states to come forward to make sure this board understands the economic impact.

In summary, recognizing the minimal contributions of the Area 5 harvest to the stock and the economic impact, we would like to request the board's reconsideration; and if that is approved, request the board's consideration to go back to status quo, February/March closure. The last point I'll mention is that we just learned last week through a federal public notice from NOAA that they have just adopted rules to maintain a February and March closure for 2016.

Unless that rule can be changed and if this board does not reconsider this action, our fishermen would be looking at a three-month closure, those fishermen in New Jersey, Delaware perhaps, and Maryland. Marin has a motion to put on the table for reconsideration unless there is discussion that you'd like to entertain beforehand.

CHAIRMAN McKIERNAN: Yes, why don't we have some discussion, if you don't mind, Tom. Is there anyone who wants to discuss the specifics? Yes, Tom.

MR. TOM BAUM: In light of NOAA's final rule publication, this would create quite a discrepancy as far as the closures for New Jersey lobstermen. Areas 4 and 5 bisect right down the middle of New Jersey, Barnegat Light, I believe. There are some holders that have both permits. In the beginning of the fishing year, they do have to declare which area they're going to fish, but they are restricted to both measures for those areas.

If the seasonal closures were not consistent between the two areas, they would have the more restrictive season, up to three months or more of a closure. I'm not sure if it is appropriate for Area 4 to be included in the motion. I'd also like to hear from NOAA about the final rule. As Tom had mentioned, is that the case – this is the final rule and that is what will happen in 2016?

CHAIRMAN McKIERNAN: Peter Burns, would you like to speak to that?

MR. PETER BURNS: Yes; to Tom's question, we did publish a final rule in January and that implements the Area 4 and the Area 5 closures February and March. Unless we did another rule change between now and then, as Tom O'Connell mentioned, those closures would remain in effect.

I can certainly see Mr. O'Connell's point that there was an error in the information that was presented before the board; but I can also see New Jersey's point, too, because we've got issues with consistency as well because we've got two areas that bisect one state. It will be interesting to see what the impact potentially on Area 4 may be if Area 4 and 5 have different closure periods. I'm not sure if the technical committee looked at that if there has been any analysis on that.

CHAIRMAN McKIERNAN: Unfortunately, the technical committee chairman wasn't able to attend today's meeting because of the disrupted travel situation. Bob Glenn has communicated to Toni and maybe Toni can share what she has learned from Bob.

MS. KERNS: I'm going to do my best. I was hoping to get Bob on the phone, but we're having technical difficulties there as well. The technical committee did review the Area 4 Proposal leading up the annual meeting. There was no proposal from Area 5; so they did not review any proposals.

Anything that we approved for Area 5 did not have a technical review; just to put that up front. Area 4's landings were much higher over their target goal from the average time frame from 2007 to 2008 than Area 5 was. It is not in Bob's e-mail that I have right in front of me, but I believe it was over 100,000 pounds over.

But in light of that, the technical committee look at Southern New England as a whole to look at the measures that were put in place for Addendum XVII to get this 10 percent reduction in exploitation. We achieve the 10 percent reduction in exploitation. Now, whether that was due to the management measures that we put in place or was it due to availability of the resource to be caught is questionable.

We don't have the ability to determine for sure whether or not it is the measures or it is the status of the resource. The technical committee would probably say that it is more due to the status of the resource and not the management measures. Bob did say in his e-mail that with the goal of rebuilding or reducing landings by 10 percent, yes, it has been achieved for Southern New England.

If you want to hold each state responsible to achieve that 10 percent, that would be up to the management board and you would have a different picture then because some states did achieve that reduction and others did not.

The technical committee strongly argues that the stock status is still in a very poor condition; and so if we're not going to move forward with management measures now, which from a technical aspect would be okay; but that the board really does need to start preparing for the results of the stock assessment that is coming forward in 2015 and to really think about these management goals that you're trying to achieve for Southern New England and what you're trying to have the fishery look at. That is going to potentially have much more restrictive measures and goals that may need to be put in place in the future. I have Bob on the phone and I'll see if there is anything I should add.

CHAIRMAN McKIERNAN: Toni, the assessment will be out in May; is that true?

MS. KERNS: The assessment should be completed by May. We actually have a stock assessment meeting next week, which will give us a much better guide of where our completion date would be. It is our goal to present the results of the assessment and the peer review to the board at the August meeting. Bob, is there anything else I should add?

MR. BOB GLENN: I think we're going to be looking at the preliminary model runs next week; and we would expect things from what I've already outlined for the board.

MS. KERNS: Okay, is that helpful?

CHAIRMAN McKIERNAN: I think so. Any further discussion? Yes.

MR. ROB O'REILLY: I just wanted to supplement what Tom O'Connell had said. We're in a similar situation in Virginia. We've been de minimis for quite a while. We have very few lobstermen that land in Virginia. However, when we adopted the February 1 through March 31 closure, it is everywhere.

We have the Area 3 and Area 5 situation that Tom O'Connell mentioned; and to ensure that there would the complete closure, we just adopted it for both areas essentially that you can't land during that period in Virginia, period. The other part I think is in contacting those who do land lobsters in Virginia; they definitely see the same signs that Tom O'Connell mentioned with an April 29 through May 31st closure. In terms of what little they may contribute overall, for them it would be a big impact to have that type of closure.

MR. TRAIN: I've heard a couple of different things about we've got people that have fished both Area 4 or Area 5 or Area 3. My understanding, and maybe I misunderstood it, is that most restrictive rule applies; so whether you eliminate one of these or not, if you have got them both or three of them stamped on your license, your traps are on the bank. When anything you're supposed to be fishing is closed, we shouldn't have displaced effort

moving from one zone to the other. Do I misunderstand this?

MR. BURNS: I don't have it right in front of me, but I believe our rule only requires them to have the traps out of the area that is closed. I guess I'll just jump in here. We just came into play with our own federal regulations to come into parity with what the commission has done with these closures and with the 10 percent goal.

We've heard from the technical committee that from an area-by-area basis we've achieve that. We've reached the 10 percent reductions; and now it comes really down to a state-by-state type of thing. This seems to be where the discussion is going on whether or not what states have made the 10 percent or not.

To me it seems like it is really an area-based decision. I think that we've got a stock assessment that is coming down here in May. We've heard from the technical committee a little bit that more information might be available that might require more action by the board. Maybe it might be worthwhile rather than changing things as we go along here and there; maybe waiting to find out what the next assessment says. Where we need to go long-term on this, stay the course with what we've done in the addenda that we've already gone through with, and then make the adjustments as needed once we see what the new assessment says.

MR. ADLER: Is the fact that this area didn't make their 10 percent based on the 30,000 pounds rather than the approximate 1,100 pounds; is that what is the core as to you didn't make the 10 percent? Is that what is doing it?

CHAIRMAN McKIERNAN: Yes, I believe it is. Toni wants to speak.

MS. KERNS: Area 5 was over their 10 percent reduction by 1,139 pounds. That was their overage for Area 5. When the board included Area 5 into the Area 4 proposal; they then were taking more than a 10 percent reduction. By including them, you're making Area 5 do more than the 10 percent, because they were only over by 1,139 pounds.

The fishermen who are fishing in federal waters do have – just to put it out there – do have the opportunity to declare each year into which areas they are fishing in; so a fisherman could decide to only fish in Area 4 or only fish in Area 5 from year to year. That would be one solution to allow them not to have faced a double closure if they didn't want that; so there is an opportunity for that. Every year federal fishermen can go back and re-declare their area. They don't lose the ability to fish in that area in future years.

MR. ADLER: But I'm looking at this thing and you mentioned an 11,000, which I don't see here. The basis of my question was that it looks like the use of 30,000 pounds was the reason that tipped the thing over rather than if the 30,000 wasn't there and 1,100 pounds was there; wouldn't it have hit the 10 percent? I don't know; maybe Maryland could answer that or maybe you could.

MR. O'CONNELL: I would be happy to. To achieve a 10 percent reduction, the harvest needed to be 36,000 pounds. Okay, we had to have a harvest of 36,000 pounds total. We actually harvested a little over 37,000 pounds, so we missed achieving the 10 percent reduction by 1,100 pounds. However, our reduction ended up being not 10 percent but 9.3 percent.

CHAIRMAN McKIERNAN: All right, any other comments? Yes, Tom.

MR. BAUM: I do have a question I guess for maybe Toni. If a lobsterman has permits for 4 and 5 and there is this discrepancy in the season closures; they're still restricted to both closures; is that correct?

MS. KERNS: If they declare both areas for that fishing year on their permit, yes; but if they only opt into one of the areas, then no.

CHAIRMAN McKIERNAN: Okay, maybe we can get a motion on this issue from Tom.

MR. O'CONNELL: **Yes; I'll move to reconsider the following motion from the October 2014 meeting: Move to approve a closed season from April 30 to May 31 for Lobster Conservation Management Area 4 and 5 to achieve the required 10 percent reduction in Addendum XVII, and allow the setting of unbaited lobster traps one week prior to the season reopening.**

CHAIRMAN McKIERNAN: So you're asking the board to reverse that motion; so we'd need a two-thirds majority. Second by John Clark. Any discussion on the motion? Jim Gilmore.

MR. JAMES J. GILMORE, JR.: Just so I've got this perfectly clear, Steve had train had said there was no impact essentially because of the most restrictive rule; but Toni is actually saying there is an impact because you essentially could lose season. We went through this two years ago between Area 4 and 6.

When we tried to make the same argument, it turns out we kind of had to eat it. Right now it seems like there is an impact because you could potentially lose season. That is Question Number 1. Question 2 is to Tom's motion; so we're reopening this but this is just for Area 5. Area 4 was just that was the existing motion; so are we talking about screwing around with Area 4, too, or not?

MR. O'CONNELL: My interest is in Area 5; but since the motion included both, we have to reconsider that and then entertain discussion on 5 specifically and others may have an interest to consider 4.

MR. DAVID SIMPSON: Just for clarity to understand where you're going, Tom; is it your plan to propose an alternative season for Area 5 that on paper would achieve the 10 percent reduction?

MR. O'CONNELL: Yes; my objective if this motion passes is to move that we go back to the February/March closure that was adopted in Addendum XVII. As I stated, we achieved a 9.3 percent reduction. When we see how '14 plays out, we've got the new assessment and then determine what the best course is for 2016.

MR. G. RITCHIE WHITE: That being said, would it not be cleaner for us to understand this to include that in this motion so that we know where we're going for sure before we approved this?

CHAIRMAN McKIERNAN: Tom, do you want to amend that motion?

MR. O'CONNELL: I was going off the advice from staff that we first needed to reconsider this. If we can do it differently, I'm open to that. I'm looking for some advice.

CHAIRMAN McKIERNAN: Staff says we can do it differently so proceed. Tom, you're going to isolate Area 5 as a second part of this motion?

MR. O'CONNELL: Yes; with the best course just to reference this being a reconsideration for the Area 5 component. I need a little help with the language there.

CHAIRMAN McKIERNAN: Toni is coming to your rescue.

MR. WHITE: While that is being sorted out, a question for Peter. I thought most restrictive rule covered everything; and so I guess I'm kind of curious if it doesn't work in this area, are there any others where restrictive does not cover?

MR. BURNS: We're checking our most recent rule on that right now and so we can get back to you in just a minute.

MR. O'CONNELL**: I would like to add to the motion if the seconder agrees is move to approve a closed season of February 1 to March 31 and mandatory v-notching for LCMA 5 as specified in Addendum XVII.**

CHAIRMAN McKIERNAN: Can I get a second on that amendment; John Clark, thank you. Do you want to speak to it?

MR. JOHN CLARK: Just a little point of confusion. I thought reconsidering the motion that has already been passed requires a two-thirds vote and wouldn't the second motion just require a majority rather than two-thirds?

MR. ROBERT E. BEAL: The way the boards have usually handled this is by doing it all in one motion. The motion would say we would like to reconsider this and replace it with that; and that is what Toni is working on right now. It would all be in one motion. It would be a two-thirds vote to approve that.

I think we get into some confusion if it is a two-step process of two-thirds for reconsideration and then a simple majority for the actual motion. A lot of times we get into the spot I think that Ritchie brought up, which was I'm not sure if I want to reconsider until I know where we're going with this. I think if we put it all in this one motion and have a two-thirds vote, we're all set.

MR. BURNS: Just to follow up on Ritchie White's question; what I said before is correct that there isn't any most restrictive to these particular closures. If somebody had multiple areas on their federal lobster permit and Area 5 happened to be closed and the other areas were open, they could fish the traps in the other areas.

I also want to just take the opportunity to just throw out there that this hasn't really been – I know that the technical committee has looked at this but it hasn't really been looked at in the context of other areas and impacts across the fishery as a whole. Again, we do have more information coming with a stock assessment; so I would just say keep in mind that with more information the board may be obligated to take further action down the road here soon.

CHAIRMAN McKIERNAN: All right, any other discussion? Any comment from the audience before I read the motion? Yes, come to the microphone.

MR. BRANDON MUFFLEY: Brandon Muffley with New Jersey Marine Fisheries. From New Jersey's perspective, I don't have necessarily a problem with trying to address Area 5. In New Jersey specifically in Area 5 we actually achieved a 33 percent reduction in Area 5 through the measures of the February/March closure and the mandatory v-notching.

The problem that we do run into is we have this split in New Jersey; and we also have a federal rule now that says Area 4 and 5 fishermen are going to be closed February and March, have a mandatory v-notching approach; and we also have regulations that we approved because of the board's action in October that are closing our fishermen in May as well.

Now our fishermen in Areas 4 and 5 are going to have a three-month closure, which I don't think was the intent because they're going to have to follow federal rules if they're fishing in that area. We're going to be closed in February and March; and we're going to be closed in May because we've already taken regulatory action to make that change in May. I just wanted to point that out.

MR. O'CONNELL: I don't have any opposition for including Area 4; but my interest is in Area 5 right now; if somebody wanted to amend the motion.

MR. WHITE: Implementation of this; I mean this would not go into effect until it was approved by the Service; so I don't if that would happen this year. I don't know if Peter could comment on that.

MR. BURNS: Right; NOAA Fisheries would have to go and complete a rulemaking before 2016 in order to change the closures for the May closure. Otherwise, the state and federal regulations wouldn't be in alignment and technically somebody would have the state and federal closures February, March and May.

CHAIRMAN McKIERNAN: Correct me if I'm wrong, Tom O'Connell; this means that you're not going to be closing April and May of this year? You would be intending to do that in '16?

MR. O'CONNELL: No, the motion would allow us to maintain the closure for February and March of this year; allow our guys to fish in May; and then determine the results of the stock assessment and see if any further management changes is needed for 2016.

CHAIRMAN McKIERNAN: And absent this vote; NMFS doesn't have a complementary rule that would close in April and May; so you would be closing this on your own within your state. Dave Simpson, did you want to speak?

MR. SIMPSON: I just wanted to be clear; and I think the conversation helped me. Right now there is a federal rule that says February 1 through March 31, at least, we closed. There is no concern about timing here. They're already closed; they can't fish; and this would take care of the problem for May? Okay, that's great, thanks.

MR. BAUM: Mr. Chairman, I would like to amend the motion to include Area 4.

CHAIRMAN McKIERNAN: Is there a second on that request to amend the motion? I have a second from Emerson. Discussion on the motion to amend to include Area 4? Tom, do you want to speak to it?

MR. BAUM: Yes, I would; just to include Area 4 for the concerns of consistency, for enforcement concerns and just to avoid the excessive restrictions of the closed seasons. Thank you.

CHAIRMAN McKIERNAN: Anyone want to speak in opposition to that?

MR. O'CONNELL: Just clarification. In regards to Dave Simpson's last question, I just wanted to make it clear that the federal rulemaking that was just published is for 2016 and not for 2015.

MR. SIMPSON: So right now what is it, February 4th today; are you guys fishing or are you closed?

MR. O'CONNELL: We are closed. We have an emergency regulation pending to close April and May pending this meeting.

CHAIRMAN McKIERNAN: So as a state you're a year ahead of the National Marine Fisheries Service on that regulation?

MR. O'CONNELL: Correct.

MR. GILMORE: All right, someone needs to explain this to me. Now that we've added 4; we didn't meet the 10 percent reduction by like I think it was 80,000 pounds; so if we include this, are we essentially eliminating the reduction in Area 4 also so that we don't have that 10 percent requirement?

MS. KERNS: Jim, are you are correct that Area 4 did not meet the 10 percent reduction. Overall, if you look at all of the landings that were reduced in Southern New England over the time period against the 2007 to 2009, the reduction was met. The technical committee is saying because we met the full reduction in all of Southern New England, if you add Area 4 or don't add Area 4 to this proposal, so be it. You do have an assessment that is coming in 2015.

The picture does not look any better so far from the landings and the surveys that we have in front of us. I'm not saying what the result of the assessment will be. We haven't actually done those runs yet. It is likely you're not going to get anything better, so you're going to have to continue to take reductions in Southern New

England. Wait until the assessment comes out, think about your goals and objectives between now and then, and then we'll have to come back and do some more management measures down the road.

MR. GILMORE: So now I will follow up with Jersey; so after the last meeting we went back and we did rulemaking and we already put this in place; and now this is a bit of a mess because now, trust me, doing like every other state doing rulemaking is not fun and not easy and now I have to go revise that.

I completely agree with what is going on in Area 5 and I have no issue with that. This I have major headaches with just because of the way this has proceeded; so I'm going to have to vote against the motion simply because Area 4 was included in it. We're down the road. We've put our rules in and we've already closed that area; and I don't know if I can undo it. Thank you.

CHAIRMAN McKIERNAN: Well, the motion to amend hasn't been enacted yet, right? We're still voting on voting whether to include Area 4. John.

MR. CLARK: Just a clarification again; even under the rules, those who have joint permits for 4 and 5, they would only be closed for 4; if 4 was closed, they could still fish 5; is that what was said? I just want to be clear on that.

CHAIRMAN McKIERNAN: All right, let's get a vote, if we're ready, on whether to include LCMA 4 in this motion; and this will be a simple majority. **All in favor of including Area 4 in this motion; all opposed; null votes; abstentions. All right, the motion fails**. Now we're back to the main motion for which we need a two-thirds majority, which would reverse the changes made in October for Area 5, going back to status quo, which is the two-month closure, February and March, and mandatory v-notching. We will need a two-thirds majority and we will do a roll call on that. Do you want to take a few minutes to caucus?

(Whereupon, a caucus was held.)

CHAIRMAN McKIERNAN: **The motion is move to reconsider the following motion from the October 2014 meeting: Move to approve a closed season from April 30 to May 31 for Lobster Conservation Management Area 4 and 5 to achieve the required 10 percent reduction in Addendum XVII, and allow the setting of unbaited lobster traps one week prior to the season reopening, and replace the following measures for LCMA 5: a closed season of February 1 through March 31 and with mandatory v-notching**. Motion by Mr. O'Connell; second by Mr. Clark. Peter Burns.

MR. BURNS: Mr. Chairman, just to clarify where we're headed on this; so this motion is not only a motion to reconsider, but it is also a replacement. We would be voting on not only reconsidering the initial vote for 4 and 5; but then replacing the Area 5 that was initially in place; is that right?

CHAIRMAN McKIERNAN: Yes; the intent is to – if it is not worded clear enough, the intent is to leave the Area 4 rules intact of the late April through May closure. All right, let's cast our votes on the motion as presented on the board through roll call.

MS. HAWK: Maine.

MAINE: Yes.

MS. HAWK: New Hampshire.

NEW HAMPSHIRE: Yes.

MS. HAWK: Massachusetts.

MASSACHUSETTS: Yes.

MS. HAWK: Rhode Island.

RHODE ISLAND: Yes.

MS. HAWK: Connecticut.

CONNECTICUT: Yes.

MS. HAWK: New York.

NEW YORK: Yes.

MS. HAWK: New Jersey.
NEW JERSEY: No.

MS. HAWK: Delaware.

DELAWARE: Yes.

MS. HAWK: Maryland.

MARYLAND: Yes.

MS. HAWK: Virginia.

VIRGINIA: Yes.

MS. HAWK: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Abstain.

CHAIRMAN McKIERNAN: **The motion passes nine to one with one abstention**. All right, any other discussion or any other business on that front? I don't think so.

MAINE PILOT TRAP TAG PROJECT

CHAIRMAN McKIERNAN: All right, we'll go to our next item, which is a review of Maine's Pilot Trap Tag Project. I think Commissioner Keliher was scheduled but he won't be attending today; so, Terry, do you want to start it off?

MR. TERRY STOCKWELL: Mr. Chairman, before I begin, I want to introduce to the board Colonel Jon Cornish. Jon has been promoted into Joe Fessenden's seat, who retired at the first of the year. Welcome, Jon.

I want to refer everyone to the handout in our supplemental materials. I am going to draw off that briefly with a few talking points before turning it over to Jon for questions and answers. To lay out the issues, Maine does not issue the 10 percent trap tag replacements. Consequently, the Maine Marine Patrol administers a very burdensome and complex replacement program that tracks every individual trap tag transaction for approximately 30,000 replacement tags a year.

The department and the marine patrol went through a management review to identify a way to streamline the process given the resource issues and the time it was taking for both the industry and the marine patrol. Jon and some other officers presented this concept to the enforcement committee at the annual meeting.

DMR is proposing a pilot program for one year that would be monitored by the marine patrol; and we intend, if it is approved by the board, to report back to this board a year from now at the winter meeting. Should the board support this pilot program, Maine will adopt some new rules that are identified in the handout and proceed accordingly. I'm going to turn it over to Jon for any more details that I've missed and for any questions and answers.

COLONEL JON CORNISH: Thank you for allowing me to speak today. I know I'm in a hard spot. I had a hard time getting here with the weather and now I'm sitting between everybody and lunch. I'm in the hot seat and I replaced Joe Fessenden, who is an icon. There a little pressure on me here, but I'll talk about an issue here that has burdened Maine for quite a few years now. We've had quite a few internal discussions about it; and we're really looking for some relief from the board today on this issue.

As you know, Maine has approximately 5,000 licensed lobstermen; and we distribute approximately three million commercial lobster tags per year. When a fisherman replaces traps, which is common, under the current requirement they have to take their tag out of the trap and bring it to the marine patrol, fill out a form, and we issue them a new tag.

You're probably all familiar with the tags. This is an example of what they look like. Fishermen

will show up at one of my satellite offices with a bag of tags. It might be five, it might be twenty, it might be fifty. I have a very small support staff. We have two secretaries that work in two satellite offices; and I have a sergeant or a lieutenant that mans that office.

This is taking an extraordinary large amount of their time not only to exchange the tags but to enter all the new numbers into the data base and make it all clean. Maine does 95 percent – and I throw that number out because it is pretty close – of our enforcement on gear in the water. We have a very efficient large boat fleet; and we're underway all the time.

We haul tens of thousands of traps each year. We do not have a large amount of untagged gear. We do make a few cases each year. We do enforce the trap tag limits all the way out to Area 3 and into Area 3. Of course, it is burdensome to us to be out 35 miles offshore even in our 45-foot patrol boats.

By allowing fishermen, as opposed to bringing these tags to us and exchanging them, to better transfer them back into another trap, it will take a great deal of administrative pressure off my folks. We don't think because of our enforcement efforts in Maine – and I don't know if this exists in other states; but because of our enforcement efforts on the water in Maine by looking at the gear, inspecting it, by hauling it up; that this will have a big impact.

I know there are concerns that people will take gear and go out to the fishing areas, snap the tags out and drop the gear in the water and that will be a problem. We don't think that is a big problem in Maine right now. If it were, all the fisherman would have to do is bring those tags back in and we would give them replacement tags for them.

We're really not accomplishing a lot by requiring them to leave the tag in the trap. We're really for a pilot program here. We know other states may not be interested in doing this. We want to try it for a year, test it out and report back to the board a year from now at the winter meeting as to how it goes.

I have talked to the Law Enforcement Committee on this. We did a presentation last year. We recently had a conference call on it. We have opened it up to discussion; and we'd like to ask for your support on this measure as we move forward. We do have some draft language for a state regulation. We have proposed a regulation at the state level. If this board today does not support this pilot project, we will stop that regulation process and stay status quo. We'd appreciate your support, and I'll answer any questions you might have.

CHAIRMAN McKIERNAN: Any questions for Jon? Yes, Doug Grout.

MR. DOUGLAS E. GROUT: I guess the first question I have is more for staff because of the section in the management plan that says, "All trap tags shall be of permanent design and not transferable once attached to the trap." Can we do this under our management plan without some kind of a management action?

MS. KERNS: You are correct, Doug, that is what the plan says; so you would be allowing a waiver to that plan.

MR. GROUT: So the board has the authority to waive a specific management measure for a single state if they so choose?

MR. BEAL: The plan does not directly give the board that authority or prevent that from happening; so it is kind of one of these gray areas. There is that provision in the plan that would be in conflict with; but as Maine has indicated, this is a pilot program.

It is a choice of the board; do you feel that attaching or re-attaching cut tags with hog rings or whatever it is to the trap is consistent with the spirit of the wording of the plan right now. It does introduce some transferability, but they are affixed the trap. It is up to the group

whether you feel you're comfortable with this pilot program or not.

CHAIRMAN McKIERNAN: I think the language was drafted probably about 16 years ago that is in the plan. I'm guessing that we've learned a lot. I know Maine and the other states actually have different approaches.

My state and I think New Hampshire as well allows the issuance of the extra tags; so clearly they're in a different situation. They also have a fleet of active vessels that are pretty vigilant about enforcement. I think we all wish we had that level of enforcement. It seems to me that they deserve an opportunity to run this pilot program for a year. Bill Adler.

MR. ADLER: I have no problem with this. However, I just wanted to ask Maine and law enforcement; do you have a pretty good handle on how you will watch this so the report that comes back, it will be a good report that comes back whether it did or it didn't work; but you have a way of doing the watch on this; do you?

COLONEL CORNISH: That's a great question. Our plan is to continue to enforce the trap tag law as we currently do and to continue to inspect gear. It will be very difficult to design a way to see how effective this is because we don't think that it is being violated now.

We don't think that the current process is being violated; or if it is, it is at a small scale. It would be very difficult to do that. We're going to continue to inspect gear, talk to fishermen. We have a lot of outreach meetings. We have a lot of zone council meetings. We will continue to go through the issue and try to figure out how to do that.

MR. ADLER: Okay, so, in other words, you've got a plan to see whether this is going to work or not? You've got some type of a way you are going to test this?

COLONEL CORNISH: Yes; we're going to continue to do what we always have done and inspect gear and make sure – we assume that fishermen, once this catches on, will not be coming to our office anymore to exchange tags. There will be no need to do that. Certainly, that will be one way to test how common it is. Also, as we inspect gear, we will be keeping track of how many fishermen are hog-ringing gear in. Now there is very few that do it.

It is illegal to put gear in without attaching the way they're formatted to be attached or built to be attached. We will be doing some surveys on how fishermen are attaching the gear and coming back with some numbers. I guess I'd have to tell you, to be honest, we have not developed a complete process on how we're going to do that yet, but we will be doing that.

CHAIRMAN McKIERNAN: Let me get some comments from Steve Train from Maine and then Ritchie White.

MR. TRAIN: Mr. Chair, I don't want to prolong this. Not having the 10 percent extra of the 800 distributed tags leaves us at a disadvantage because when we're rotating traps they're not in the fishery. We're losing money; and if we want to rotate new gear and old gear, we've got to cut the tags out, turn them into an officer and wait.

By allowing us to cut the tags out, hog-ringing them into another trap and put them back in the water, it keeps us efficient. An honest guy is never going to be a problem, anyway. He is never going to be an issue. It just enables him to make a living and do things a little bit easier. The enforcement we have on the water is tremendous.

You're going to have a pirate in every fishery and you're going to have it in every state; and you're not going to catch them; and this is going to make it easier for them. You're not going to catch them every time. That is not the problem. It is the honest guys that are struggling with the rule we have now.

MR. WHITE: So the intent would be to try this for a year, you come back and report to us; and

then if it is successful, then we would initiate an addendum to change the plan; is that the process that you would see it, Dan?

CHAIRMAN McKIERNAN: I do, yes. Toni.

MS. KERNS: Just a question for the other elements of the plan for the trap tags; we have to make sure that the area-fished permit number is also written on the tags; so when they cut the tags and then reaffix them with the hog rings, that won't be obstructed or mutilated in any way the information that is on the tag; is that correct?

COLONEL CORNISH: Yes, that would be correct. There is a provision in the language that we have in the rule that will require them – it is actually going to be easier for us to do enforcement because the tag will have to be visible. Right now the tag can be put in the trap; and if an officer is inspecting a trap, oftentimes you have to reach into their trap and try to twist the tag around. It is very time-consuming, ice and weather conditions. Under this provision the trap tag, if it is hog-ringed, then it will be visible. You can look right down on top of it. It will be similar to this. You will be looking right down on the top of the tag.

MR. BURNS: Jon, I was just curious whether this is just going to be state-only Maine lobstermen or federal permit holders. The reason I'm asking is because our federal regulations require that the trap tags be permanently affixed to the trap. Certainly, if you doing a pilot program, you're just going to see how it is going to work out. It would be interesting to see whether that would just be a state-based thing or not.

COLONEL CORNISH: Well, the tags will still be permanently affixed to the traps and it will be everybody; all Maine fishermen, whether they fish in federal waters or state waters.

MR. BURNS: I just want to get an idea if you know how many – because I read the report; it looks like it is just you get some change in your regulatory text; and if you've got a certain number of permit holders or licensees that you expect will participate in this; is it by zone or do you know yet?

COLONEL CORNISH: We don't know; but our thought process is that once this is out there, it will become very commonplace that most fishermen will hog-ring their tags into the traps and remove them and put them in other traps as they shift gear around.

CHAIRMAN McKIERNAN: **All right, we have five minutes left in the meeting, and I want to get a motion to endorse this one-year pilot program. All right, a motion by Steve Train to endorse Maine's request for a one-year pilot program; seconded by Bill Adler**. Any discussion on the motion? Doug Grout.

MR. GROUT: So a follow-up question here is I'll tell you quite frankly our Law Enforcement Committee member had some concerns with this; and so I wanted to ask – you said you had presented this program at the fall meeting. I understood there was a conference call of the LEC that happened last week, I believe. I don't want to put you on the spot, Jon, in reporting for the LEC, but what was the LEC as a whole response to this program?

COLONEL CORNISH: Doug, I don't mind answering that at all. At the original presentation last fall, it was done by a couple of lieutenants from Maine. There was some concern from the LEC that this may not work in their state for their purposes. That was kind of when the decision was made to go the pilot project route and have it only impact Maine.
On the conference call the other day, there were 19 people on the call. Pat Moran spoke up and his concerns were that – hopefully I can speak for him here – his concerns were how it would impact his state. He was advised that at this time it wouldn't have any impact on his state. Mark Robson had indicated that Rhode Island had some reservations on this.

I believe Kurt Blanchard had some reservations on it. Kurt was not on the call. I believe Kurt's reservations were going back, as it was mentioned earlier, the 16 years when this took place, looking back at that and why it was done in the first place; you know, why would we want to change it.

MR. BURNS: Jon, I just want to say that I think it is a very interesting proposal. I certainly agree that whenever there is a way that you can try to improve things for fishermen to make it easier for them and as long as it is still enforceable; that we should as a group be able to explore those kinds of options.

But I'm looking at our federal regulations and I'm just not sure whether or not I can support this because I think it is going to require – it is just going to run afoul of our federal regulations because even though I know that the rings are going to be affixed to the traps with the hog rings, it is not permanently attached. I don't know how we would address this. My recommendation would be if you're going to do a pilot project, if you could keep it within just state permit holders, then that might make it a lot cleaner for us. I don't know if I can support it on the record the way it is now.

MR. WHITE: Mr. Chair, just to confirm my understanding; this pilot program is for all license holders in the state? In other words, you're not going to take a subset and try it; it is for all fishermen?

COLONEL CORNISH: That is correct; it would be for all fishermen. It would be very difficult to break out a subset and to do that way.

MR. WHITE: Do you now track in your enforcement efforts the amount of traps you hauled that do not have tags on them presently; so that there would be something to compare this to during this trial to see whether there is an increase of hauling gear without tags.

COLONEL CORNISH: Absolutely! All our boats have boat logs and every time a trawl is hauled, if there is a single trap that doesn't have a tag in it, that is logged, and we have records of all that.

CHAIRMAN McKIERNAN: Okay, let's get a vote on this motion. The motion is to endorse Maine's Pilot Trap Program for one year. Motion by Mr. Train; seconded by Mr. Adler. All in favor; opposed; abstentions; null votes. **It passes nine to two.**

UPDATE ON THE DRAFT JONAH CRAB FMP

CHAIRMAN McKIERNAN: All right, the last item on the agenda is a quick update on the Draft Jonah Crab FMP from Marin Hawk.

MS. HAWK: Staff passed around to the board a letter that was received from the New England Fishery Management Council concerning Jonah Crab. I just wanted to point that out to your attention. In that letter the council asked that we include a member from the council on the Lobster Board to represent any future actions that may include Jonah Crab.

Then the second thing, very quickly, is we are still moving forward on the development of the fishery management plan for Jonah Crab, but the plan development team has run into some issues. We would like to formulate a working group to help answer any questions that the plan development team has. If we could have a couple of volunteers from the board, that would be very helpful to us.

CHAIRMAN McKIERNAN: We're looking for volunteers. What expertise are you looking for?

MS. HAWK: We're trying to parse through a good way to characterize the fishery and also to differentiate between directed and non-directed trips. In the past the Lobster Board has requested that any Jonah Crab fishermen include a lobster permit; but in federal water this isn't very feasible. I guess just general expertise on the Jonah Crab Fishery.

CHAIRMAN McKIERNAN: Any volunteers? Bill Adler. Anybody from the Gulf of Maine? Bill is from the Gulf of Maine, of course.

MR. ADLER: If I may, what about Dave Borden; would he be a good guy?

CHAIRMAN McKIERNAN: Yes, I would like to volunteer the vice-chairman who couldn't make it. Does that help you?

MS. HAWK: I think that's fine.

CHAIRMAN McKIERNAN: All right, and if Marin needs more help, she will just reach out to the board members directly. Toni Kerns.

MS. KERNS: Just to go back to the first part of Marin's presentation or discussion; we would just need consensus from this board if there is no objection that we can invite the New England Council's Chair or Executive Director or their proxy to sit on the Lobster Board as a voting member, which the Charter does allow for that to occur.

MR. THOMAS FOTE: Since there are a lot of members of the New England Council that sit on here; could we just do it as one of the proxies instead of putting on an individual? Save money for the commission; that's what I'm looking at.

MR. GROUT: The New England Council made it clear that it would be someone other than the state directors that would be on there; that they would be appointed and they wanted someone different. Terry or the Executive Director will be appointing someone other than Mark, myself or him.

CHAIRMAN McKIERNAN: All right, any other business before the board today? Bill Adler.

MR. ADLER: Very quickly; we have an advisory panel nomination for the Jonah Crab Fishery I believe that was in the paperwork. Do we have that?

MS. HAWK: We do. We have sent around the memo; but since we're pressed for time today, we're going to continue with that via e-mail.

MR. ADLER: We're going to what?

MS. HAWK: Continue with that via e-mail because we've had a couple more nominations come in.

MR. ADLER: All right, are we going to approve the guy that did apply?

MS. HAWK: Not at this time, no.

ADJOURNMENT

CHAIRMAN McKIERNAN: All right, no other business, the meeting is adjourned.

(Whereupon, the meeting was adjourned at 12:35 o'clock p.m., February 4, 2015.)