

ATLANTIC STATES MARINE FISHERIES COMMISSION

AMERICAN LOBSTER MANAGEMENT BOARD

Radisson Hotel

Alexandria, Virginia

April 4, 2000

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The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Roosevelt Room of the Radisson Hotel, Alexandria, Virginia, on Tuesday, April 4, 2000, and was called to order at 3:00 o'clock p.m. by Chairman Gordon C. Colvin.

CHAIRMAN GORDON C. COLVIN: Board members, please take your seats, let's begin. Good afternoon. I would like to call this meeting of the American Lobster Board to order. I want to welcome everyone here to the meeting and ask Amy to call the roll.

(Whereupon, the roll call was taken by Ms. Amy Schick.)

MS. AMY SCHICK: Mr. Chairman, we have a quorum.

CHAIRMAN COLVIN: Thank you, Amy. I think just about all the papers have been handed out now. If there are any Board members that need anything else, if you just make it known to the staff in the back of the room.

Please take a moment to review the Agenda. You'll notice that the Agenda is quite long and ambitious and we have only two hours, less than that now, so I will be kind of banging on things to try to move things along here.

There are two items known to the Chair with respect to items of other business at this point. The first is the planning calendar and budget, which I believe is in the packet.

And the second is a letter from several associations regarding issues of tag transferability in the EEZ, which I believe is the last item in the packet. Are there any other Agenda items to be brought forward today? Pete.

MR. W. PETE JENSEN: It's not an Agenda item so much, Mr. Chairman, as our fishermen are still pretty much distressed about the tag system and so they said to me, "Are you sure the Board even knows what they're regulating?"

And so they tasked me to bring in a black sea bass pot and a lobster pot and they're over there in the corner. And they would like all of you to take a look at them and see what the differences are so that we know what we're regulating.

CHAIRMAN COLVIN: There will be a quiz to see who knows which is which. Thank you, Pete. It's conceivable that that issue could be raised as a question under the NMFS status report, response letter from Pat Kurkul. Mark.

MR. MARK GIBSON: Yes, we have a quick FYI item for the Board about some regulatory changes that our Marine Fisheries Council made. You probably already know about them, but we wanted to officially notify you.

CHAIRMAN COLVIN: A quick notice FYI item. We'll put it in under other business. It may not be quite so quick. Any other Agenda items or suggested changes to the Agenda? Seeing none, we'll proceed along with the Agenda as just modified.

The next item of business is approval of minutes for the meeting of February 2000. Are there additions or changes to the minutes?

Motion to approve, Bill Adler; seconded, Pat Augustine. Objection to the motion? Without objection the motion carries; the minutes are approved.

The next item is public comment. If there are any public comment with respect to any issues on lobster management. I would invite it now, pointing out that we will address public comment on any action items that come up later in the Agenda.

Seeing none, we'll conclude this item and move on to Item 5, Overview of the Stock Assessment Peer Review Process; Dr. Kline.

DR. LISA KLINE: Everybody should have a handout. I would like to apologize, apparently it didn't double-side copy, so you only have the front sides of everything. Everyone should have been sent this information previously.

If not, please contact our office and we will send it out.

I'm just going to give you a brief update of where we are in terms of the Peer Review. We are scheduled for May 8 and 9 of 2000, not 1999 as it says on this notice.

The meeting is going to be held in Providence at the Radisson Airport Hotel. We have a block of rooms at the Radisson. We also have a block of rooms at the Master Host Inn, which is across the street.

Unfortunately, we couldn't block 40 rooms at one hotel so we have 20 in both, so try the Radisson first and then go to the overflow hotel, if needed. We will reimburse travel for all state and university representatives of the Stock Assessment Subcommittee plus the Chairs and Vice-Chairs of the Board, the Technical Committee and the Advisory Committee.

The travel authorizations should have gone out with the notices so you can check that, and see if your name is on the list. If there are any errors and you're not on the list, please contact me. I think we have that pretty accurate.

The agenda is pretty tight. We have a two-day agenda. We'll be starting at 8:00 on Monday morning. First, about three-quarters of the day will be a series of presentations on the stock assessment report itself.

The last half of the first day will be set aside for public comment. We will try to get as much public comment in that first day as we possibly can. If need be, we'll continue public comment on Tuesday morning.

The rest of the second day, on Tuesday, May 9, will be focused on specific questions from the Peer Review Panel members to either the presenters of the stock assessment report or the members of the public who made comments.

And we'll basically allow the Panel members themselves to control that part of the meeting. We have six Panel members. They're listed on the top of the agenda. We have two members from Canada Department of Fisheries and Oceans, Dr. Gerry Ennis and Dr. Peter Lawton; John Hoenig from VIMS; Bob Muller from Florida Fish and Wildlife Commission; Saul Saila, who's retired from University of Rhode Island; and David Sampson from Oregon State University.

And these six members represent a good combination of lobster biology/ecology background as well as stock assessment expertise. And I'm going to conclude there and answer any questions that anyone might have.

CHAIRMAN COLVIN: Are there questions from the Board? Pete Jensen.

MR. JENSEN: Lisa, on the terms of reference under Item 4, evaluate methods used to estimate the overfishing definition, is there going to be a look at the overfishing definition itself?

DR. KLINE: Yes, that is part of the assessment report, and we also have some minority opinions that will also be presented concerning that term of reference.

I should also point out that the terms of reference have been included in the information that has been sent out. They do need approval by the Board, just as a final approval.

CHAIRMAN COLVIN: And I would remind the Board that you have all seen them and invited to comment on them and some of you did prior to today, well prior to today. Are there other questions before we move on to that action item?

Seeing none, I just wanted to highlight the public summary version of the stock assessment report. Lisa, do we have copies of these in bulk for Board members if they want them for folks back home, or can they get them?

DR. KLINE: We can make them. They can contact our office; let us know how many copies you need and we'll send them out.

CHAIRMAN COLVIN: Okay. Yes, there is a stack on the table. I suppose if they don't get used up today, anybody who wants them can help themselves. If there are no further questions, I would indicate that action is appropriate with respect to the Board acceptance of the proposed terms of reference for the Lobster Peer Review. George.

MR. GEORGE LAPOINTE: Mr. Chairman, I would move we accept the terms of reference for the Peer Review, recognizing your comments that they have in fact been commented on by Board members prior to this time.

CHAIRMAN COLVIN: Thank you. John, second. Discussion on the motion. Is there any objection to the motion? Does anyone wish to be recorded as abstaining? The motion carries unanimously.

Is there anything else on the stock assessment peer review? George.

MR. LAPOINTE: Just a word of thanks to Commission staff who have both worked on the stock assessment and the peer review for all the hard work they did in getting it to the point it is today.

CHAIRMAN COLVIN: There are a lot of people who worked very hard for a very long time on the stock assessment and I guess --- has it been sent to all the Board members, the draft assessment? Lisa.

DR. KLINE: Yes, it's been sent to --

CHAIRMAN COLVIN: It may not have been.

MS. SCHICK: A lot of Commissioners have come up to me and said that they have not received the full document so if we could have people raise their hands who have not received the large, about 600-page document, I'll take your names down and we'll send it to you.

CHAIRMAN COLVIN: Bruce Freeman, John Nelson, Jill Goldthwait. Anyone else need it? God bless you, it's a challenge. We will talk later under plan calendar and budget about the implications that will flow from the Peer Review subsequent to the Peer Review with respect to our need to continue implementation of our management program.

That will come up at that point. I would also like to thank the many people who contributed to completion of the assessment. It was a very arduous process involving a great deal of time.

I want to just single out Amy in particular who really pulled things together at the end, and that was very much needed to get this thing brought forward and get the development to end and the review to begin, so thank you, Amy. Bruce.

MR. BRUCE FREEMAN: Just one question of both you and Amy relative to minority views. I know there was a lot of discussion, a lot of dissention. It's felt by everybody that any view that people had was expressed in this document.

I just want to make certain that's been well covered so that will be considered by the Peer Review. Everyone has their opportunity to present their position.

CHAIRMAN COLVIN: I think it's fair to say that the bulk of the document represents what the members of the Technical Committee, who were the last review body, were agreeable to submit to Peer Review, not necessarily that every member agreed with every sentence in it.

MR. FREEMAN: Right.

CHAIRMAN COLVIN: It includes sections that are specifically minority reports and ample opportunity was given to participants to develop and incorporate minority reports with respect to different parts of the assessment document.

So that opportunity was given and many parties partook of it. And the peer reviewers will have the benefit of looking at some different points of view with respect to some of the issues incorporated in the assessment.

Anything else on the Peer Review? The next item is the New Jersey request for exemption from portions of Addendum 1. There is a letter, I believe, from Bruce in the packet on this issue. Amy, can you frame it for us and then we'll give Bruce an opportunity to discuss his proposal.

MS. SCHICK: The letter from Bruce Freeman follows the blue tab after the minutes, and New Jersey submitted this request to staff. It has not gone before the PRT or the Technical Committee.

And I'll let Bruce explain the issue, but it's dealing with the implementation of portions of Addendum 1 and the problem of having different state and federal regulations when a large percentage of their lobster fishermen are federal permit holders and fish in federal waters and that's creating problems for the state, so I'll let Bruce describe the situation.

MR. FREEMAN: Thank you, Amy and Mr. Chairman. This was an issue that I had discussed with several staff members. New Jersey is in a very difficult position in that we've moved forward with public hearings relative to the Commission's plan particular to Management Area 3, 4 and 5.

And we have framed regulations that would put in place what the Commission for those three lobster conservation management areas have required in the plan. The difficulty is we have federal regulations which differ.

And we have a proposed rule which now, if we implement, is going to have two separate systems: one, the federal system; and, secondly, the proposed system which is very different.

And the fishermen are going to be faced with two choices. We see this as just confusing to the fishery. It's going to be confusing, certainly, to enforcement. And we see the need to essentially hold ours in abatement until we get the final rule or hopefully a modification of the rules, particularly for the historical participation, in Areas 4 and 5.

We have until October of this year to put our rules in place, and we could do that quite rapidly. We're essentially asking to hold those in abeyance until hopefully we get a determination by the federal agency to modify their historical basis and then we would implement our regulations.

In the meantime, we believe we probably have less than 12 fishermen that fish only in state waters. The other fishermen have federal permits and fish in federal waters. It's just the opposite situation that we have in Maine where the great majority of fishermen fish in state waters.

What we're essentially asking for is a time where we would not put in regulations that would require trap tags of state-only fishermen. And, again, I indicate this will probably affect about a dozen or so fishermen.

The numbers of traps they use in state waters is very limited because the catch is very small in state waters. It's primarily an offshore or out-of-state fishery. So we are asking for an exemption of the trap tags in state waters which would be Section 2.5.5; the basis for the historical trap tags in Area 4 which would be Section 2.5.6.

I think that's it, just those two sections. Therefore, if there are no questions, I would like to move that New Jersey be exempt from those sections, at least until we know the federal regulations will be modified or not

modified, in order to avoid this confusion in state waters.

Our fishermen will be operating, and they are operating under the federal rule. They will be obtaining trap tags from the Federal Agency in state waters and, as I indicate, this covers the great majority of our fishermen.

If there are any questions that any of the Board members have, I'd be happy to answer those.

CHAIRMAN COLVIN: Well, there is a motion in there. Let me ask, first, is there a second to the motion or do you want to read it first? Pete Jensen seconds the motion.
Are there questions for Bruce? Harry.

MR. HARRY MEARS: We've discussed this issue before with both Bruce and other staff from New Jersey, and certainly based upon the information provided as summarized in Bruce's letter, it's hard to argue with the rationale which is set out.

I do have a couple of questions with regard to the compilation of surveys by the state of New Jersey that would conceivably be used to base historical participation in Areas 4 and 5.

Bruce, could you give us some sense of the time line on that and when that type of data may be available?

MR. FREEMAN: Yes, as Harry indicates, we've been in contact with both he and Amy to try to resolve this issue. We have sent out a letter to all our known lobster fishermen.

We've taken the list from the Fisheries Service on fishermen having lobster permits and our own state list of fish pot and trap fishermen and sent a letter to each asking for information pertaining to the areas they fish, number of pots they fish, seasons and so forth.

We're getting that information back. We'll provide that to Harry in order to help frame some of the requirements that he's supposed to address in his EIS. And we're getting this information back as I speak.

We probably will summarize, Harry, some of that information as quickly as possible and send that on to you. As we get more of these questionnaires filled out, we'll provide that information.

But it should help frame this whole issue so that the Fisheries Service can make their decision how it's going to impact fishermen, at least in New Jersey, and how many fishermen would be impacted.

So we've made a commitment to provide that and we will do so. We'll provide it to the Commission as well, but particularly to the Service.

CHAIRMAN COLVIN: Mark.

MR. GIBSON: Bruce, do you know of the state's lobster landings what fraction comes from state waters?

MR. FREEMAN: I'm sorry.

MR. GIBSON: I said of New Jersey's lobster landings, what fraction would come from state waters? Do you know that?

MR. FREEMAN: We don't know absolutely, Mark, but it's probably less than 1 percent. We estimate probably less than one-half of one percent. And our landings are usually less than 400,000 pounds.

CHAIRMAN COLVIN: Eric.

MR. ERIC M. SMITH: On face value I don't see any problem with Bruce's motion. As I think a little further down the road, though, as delicate as this is, I need to, I guess, ask the Chair what you might anticipate New York contemplating if this motion were to pass because of the south shore and New Jersey and EEZ-type of fishery?

Then if you go around the corner and think of Long Island Sound or Area 6 only, the closer you get to home, the more I get a little bit anxious and not for any reason other than we have already delved greatly and irrevocably into issuing tags to the point of sending people order forms and they're ordering tags.

So we're into this now. And you can appreciate our dilemma if for some reason New York were to say, "Yes, we probably have to do it, too," meaning no disrespect to New York, just appreciate the dilemma; we'd be pilloried for having done it first and then other places not doing it by the deadline.

That concern aside, what Bruce is describing satisfies me that for his particular concern, I don't have a whole lot of that same type of concern. It's short duration. It's very few people. It's a minuscule amount of landings.

All of those are the kind of things that, on a case-by-case basis, you might judge that, well, because of the uncertainty and the inconsistency in the state versus federal regs, that's not one to worry too much about.

Final point. Bruce's comment presumes that the National Marine Fisheries Service will adopt complementary regulations or at least have their consideration of them done and an answer, so to speak, on the street by about September.

And that would be great if it were so, but that seems in the recent past, and now no disrespect to the National Marine Fisheries Service because they have a huge workload, but that seems very quick.

And it's a very thorny, contentious issue. So I guess I would ask both Gordon how he feels about New York and Harry about he feels about the federal regulatory process coming forth on that type of a schedule.

CHAIRMAN COLVIN: I think the only thing I can say, Eric, is that this is not something we're proposing to do right now or giving serious thought to. And I can't and won't put myself in the position of telling you what might happen in the future. I don't know.

MR. FREEMAN: If I may, Eric, to your point on the time, we have until October. We have actually a year. We made a proposal in October of last year and have a year to implement.

If we don't implement, we have to start the process all over, which would require six to nine months. And our dilemma is if, in fact, the federal regulations change within that period, either we're going to be out of compliance with the Commission Plan or our fishermen won't be able to participate in some portion of the fishery.

We probably will act by late summer. If we don't see a regulation out from the Feds by that time, we would probably have to implement our state regulations, which are going to be very different.

We just wouldn't have any choice. And so there will be a time certain for us because we'll act. But we're hoping that in the interim this issue can be resolved. And if we need to modify our regulations because of the way the federal regulations are so stated, we can do so.

We can do so very rapidly, within a matter of a few weeks and finalize our rule. But we'd rather not do that. It's just going to add total confusion. We're going to have fishermen that say, "There's a state position; here's a Federal position."

They're going to use one against the other. If they're not confused, they're going to start using one to gauge the other with and it's just going to be total chaos. And so it's just bad management to create problems when, in fact, they don't need to be created at all.

CHAIRMAN COLVIN: Bruce, the question arises from your answer as to whether you would be willing to put that date certain into the motion.

MR. FREEMAN: Yes, we would have no difficulty because we will have to move by that time. I would say September because we're going to have to move before our October date.

And in all reality, Gordon, we would probably move in August to do that. But if we modify that --

CHAIRMAN COLVIN: Until the Federal regulations are modified but not later than September 1st of --

MR. FREEMAN: September of 2000. That would be fine.

CHAIRMAN COLVIN: Pete, is that satisfactory to you? Harry, do you have any help with Eric's second question?

MR. MEARS: Just with regard to Eric's question, this type of question has been asked before, and really the best I can say is that the National Marine Fisheries Service recognizes the timing sensitivity, but the remarks are well taken that it's difficult if not impossible for me to predict date certain with regard to implementation dates.

CHAIRMAN COLVIN: Pete.

MR. JENSEN: Well, this is ancillary to that question. Can we presume, other than this issue before us, that there are other reasons why NMFS would be making some proposed rule changes or is it only this one issue that you're presuming will be proposed?

MR. MEARS: I'm not sure I understand the question, Pete. Could you repeat that?

MR. JENSEN: Well, there's an anticipation here, and I think you are lending credence to it, that there will be some proposed modifications to the Federal regulations for lobsters.

My question is is this issue before us now the only issue on which you may be making proposed changes or

are there other issues out there that may show up in a proposed regulation?

MR. MEARS: I believe this will arise later in the agenda with regard to a NMFS letter back to the Commission, but there's a package of proposed changes which will be responding to recommendations made by the Commission, including historical participation in 3, 4 and 5, including a gauge increase, including a waiver for black sea bass fishermen, including the conservation equivalency request with regard to New Hampshire trap limits.

And I think there are others, but there are four right there.

CHAIRMAN COLVIN: Is there further discussion on the motion? Seeing none, are you ready for the question? Is there a need for caucus time? Take the question; all in favor, please signify by raising your right hand; opposed, same sign; abstentions; null votes. The motion carries.

Anything further on this item? Then we move on to the Agenda item number 7. At this point the Chair will recognize Executive Director Dunnigan.

EXECUTIVE DIRECTOR JOHN H. DUNNIGAN: Thank you very much, Mr. Chairman. I would just like to take a second to orient the Board to what we're talking about here.

As you are aware, the Commission has been involved in litigation as a defendant, along with the Commonwealth of Massachusetts, that was brought by a number of plaintiffs, including fishermen from the Outer Cape as well as some representatives of some trawl fishing interests.

And we've had a number of legal proceedings and whatever as this litigation has carried on for some time. A couple of weeks ago we were in Federal District Court in Boston. And basically the purpose -- and this was not the judge who is going to be our trial judge if we go to trial.

It was a different judge, and his purpose was basically to ask us, all of the parties, isn't there some way we can avoid going to trial here? It's something that federal judges, especially, are doing all over the country now in order to control their case loads.

And so there have been, in that spirit of exploring is there some way we can avoid going to trial here and maybe the answer is no, but in that spirit there have been a number of discussions that have occurred among the various parties to the lawsuit, the fishermen, the Commonwealth, and the Commission in the interim.

And what you are next going to be dealing with is the result of those discussions. And without getting into the substance of those matters -- that'll be handled by the various people that are interested -- I just want to make sure that you understand the procedural setting and what the implications of it are.

So, this next segment is going to be addressing a matter that will deal with a proposal arising out of our efforts to mediate this civil litigation brought by the Outer Cape Lobstermen's Association, two individual lobstermen and the East Coast Fisheries Federation against the Commission and the Commonwealth in Federal District Court in Massachusetts.

The plaintiffs in this case chiefly object to the prohibition regionwide on the possession of v-notched female lobsters that is contained in Section 3.1 of Amendment 3 to the Fishery Management Plan.

During this discussion which we held on February the 28th before Judge Mazone, the parties agreed that the Lobster Board would, today, consider a specific proposal if one was brought forward, by plaintiffs' representatives and by the Commonwealth, offering conservation benefits for lobsters in the Outer Cape area as a basis for withdrawal in the Outer Cape of the v-notch provision.

Now it's understood that any action that the Board might want to take in this regard is subject to our usual ASMFC procedures. But this segment of the meeting is in the nature of a settlement discussion of litigation.

And what that means is that under Federal Rules of Evidence, the statements that we make here today and the statements that are made by the other side are not admissible in a court proceeding.

So we are exploring alternatives. We should do that in good faith. We should not do it or refrain from doing it with any fear of what's going to happen if we ever go to trial.

Anything we say can't be held against us; anything they say can't be held against them. We're trying to find a way to avoid litigating the case. I just wanted to make sure that you understood that part of the procedural aspects here before you began your deliberations. Thank you, Mr. Chairman.

CHAIRMAN COLVIN: Thank you, Jack. Are there any questions for Jack? Pete.

MR. JENSEN: Question of clarification. Are we talking about only in-state waters here, under the ASMFC Plan? Does that frame the issue or does it go into federal waters also?

EXECUTIVE DIRECTOR DUNNIGAN: It will potentially deal with both areas. I mean, our Plan is written for the Outer Cape Management Area which includes both federal waters and state waters.

The extent to which the National Marine Fisheries Service implements that in federal waters is a separate issue, sort of. The question right now is it right for us or what are we going to do about having included this in our basic Fishery Management Plan to start with.

CHAIRMAN COLVIN: Pat.

MR. PAT AUGUSTINE: Thank you, Mr. Chairman. Has the Technical Committee taken a position on this, Jack, relative to -- I know you sent us an e-mail with an update, but has the Technical Committee made a recommendation to the Board itself, or are you in a position to make a recommendation to the Board based on the fact that you're deeply involved with the process?

EXECUTIVE DIRECTOR DUNNIGAN: Pat, all of that is going to come out as a part of the discussion.

CHAIRMAN COLVIN: George.

MR. LAPOINTE: One of the lessons I give my staff is nothing is off the record. How comfortable are you with these discussions not showing up later, Jack?

EXECUTIVE DIRECTOR DUNNIGAN: Very.

MR. LAPOINTE: Okay, thank you.

CHAIRMAN COLVIN: Okay, with that, there is a memo from Amy in your packet, and I believe a memo was distributed today by staff from Jim Fair to the Board that presents some suggestions here. Jim, do you want to present that to walk us through it? Thank you.

MR. JAMES J. FAIR, JR.: Okay, thank you, Mr. Chairman. I'd rather work from the memo that I passed out today rather than what's in the packet. Some of it's the same, but --

CHAIRMAN COLVIN: Does everybody have it, dated March 30th from Jim to the Board on Massachusetts DMF letterhead.

MR. FAIR: Okay, as Jack said, when the judge asked us what could be done by way of mitigation, we both said we can use the process. The process for bringing this Plan to where it is now was a formal process and the only way to change that Plan would be to use the same process.

That would mean going with some sort of an addendum to the Plan that would essentially make the issue that they're objecting to an optional issue rather than a coastwide issue, thereby giving each area, or in this specific case, this one area, the option of coming up with an equivalent measure that would offset the loss of v-notching as a provision in their area.

Based on some information that we gave them regarding the model and how that works, we gave them a range of options that they could look at regarding gauge increases because that's been their main proposal, that they would trade a gauge increase for the v-notching provision.

And what they came up with was basically an immediate sixteenth of an inch increase to bring them up to three and fifteen-sixteenths and then, depending on what happens in the other areas, a proposal that would automatically raise that to a higher level every time -- for instance, Area 1 changes their gauge, so that they would always be ahead or at a larger size than the surrounding areas.

In that way, although they're getting an immediate increase in egg production over what is presently the case, as the other areas catch up to them in terms of the minimum size, we would adjust the minimum size in that area so that they would always be one step ahead.

There is also a memo from our Technical Committee representatives. Actually, it's from Bob Glenn, but Bruce Estrella is also involved in this analysis. And using basically the Idoine model, running these two measures together, showing that at least we believe that there is enough merit to this proposal to certainly bring it forward as a suggested conservation equivalent measure in the Addendum.

Our concern is that the Addendum process itself may not move fast enough to satisfy the judge in this case, and that's obviously something that we need to deal with. Assuming this is accepted on the schedule for the Addendum, we would also like the Board to consider possibly raising the status of Amendment 4 to a higher level.

I know it's on the extreme back burner right now. There may be other small measures, and I know there are. I think David Borden also has a measure. And there may be other states that have similar things, so it could be done in an expedited fashion without a lot of staff input and we can certainly suggest that, too.

I'd be happy to answer any questions that anybody might have.

CHAIRMAN COLVIN: Let me just ask, before we go to questions for an assessment from staff, if we were to go forward with consideration of a proposal like this, what would the mechanisms be and what would the likely steps in the process be?

MS. SCHICK: The way that the v-notching provision is written up in Amendment 3 is that that provision of the FMP can only be changed by a plan amendment. It cannot be done through an addendum process.

Therefore, the Commission would have to go through a full amendment process to make that change to the FMP and that requires a little bit more -- I shouldn't say a little bit; it requires more effort than the addendum process.

It's a much longer process that we are required to operate under.

CHAIRMAN COLVIN: Did you want to address that, Jack? Obviously, an initial step would require a Technical Committee evaluation of the equivalency argument that's offered in the proposal. And I'm not sure where that fits into the process, but it would likely be a first step. Jack.

EXECUTIVE DIRECTOR DUNNIGAN: Well, remember, Mr. Chairman, what you would be doing with this amendment, as you've already decided to start working on Amendment 4, Amendment 4 would allow states to use conservation equivalency with respect to the 100/500 limitation on non-conforming gear, essentially trawl-caught lobsters.

I think the issue here is do you want to add to the consideration in that amendment questions of allowing conservation equivalency by states with respect to the v-notching provision as well.

So, you're not necessarily having to bless this particular proposal today. I think the implication is that you would do that ultimately. What you need to do first, though, if you want to go down this road, is to amend the Fishery Management Plan to allow these kinds of discussions to come forward.

And your evaluation of what has been presented here may impact whether or not you want to go down that road. But it's the question of, you know, do we want to go down that road and allow the states an opportunity to be able to deal with the v-notching through conservation equivalency.

CHAIRMAN COLVIN: John.

MR. JOHN I. NELSON: Thank you, Mr. Chairman. To Jack, what is our time line for Amendment 4 according to your strategic planning?

EXECUTIVE DIRECTOR DUNNIGAN: At the moment we have no time line for Amendment 4. The decision is made to be there. Right now the Board and the states and the staff have been focusing on the implementation of Addendum 1, for example, the trap tag system, and also begun focusing on Addendum 2, which is fishing mortality rate reductions.

So, I think you'd have to be considering also putting some priority behind Amendment 4, and that may mean that other work either within the lobster area or elsewhere has to be delayed.

MR. NELSON: All right. And if I could, just a follow-up, Mr. Chairman. Jack makes that point as far as something else would probably have to be delayed in order to do that.

And I guess what I want to just ask Jim is do you feel that there is some time line that this has to be done by, or that if it's not done by a certain date, that the trial then would move ahead?

MR. FAIR: That's very difficult to answer, John. I think that what we agreed to do is use the process. I mean, this obviously is the process. We were hoping that Amendment 4 could be accelerated somewhat, but certainly I think as long as the plaintiffs agree that we're moving forward, that the judge will agree similarly.

But the bottom line, as always, if they don't agree or he doesn't agree, then we go back to court.

CHAIRMAN COLVIN: Jack.

EXECUTIVE DIRECTOR DUNNIGAN: And there is another option under response to Mr. Nelson's question and that is there may be other resources that the states could bring to bear to do the work on this amendment besides just those that we have arrayed here today.

If we wanted to pick up, as some states have done for horseshoe crabs or for spiny dogfish or other plans, there may be additional resources besides us. So we're not necessarily implying that we have to drop stuff if there's more resources that can be made available.

CHAIRMAN COLVIN: George.

MR. LAPOINTE: An amendment isn't just a function of available money. It's a function of staff time on the part of the Commission and all of the states. And if you put something on the front burner, something goes off.

And certainly, the idea of jazzing up Amendment 4 right now, given all the other things we're doing, given all the implications of the stock assessment on our current management program and the need to potentially adjust that, does not rest well with me right now.

CHAIRMAN COLVIN: Mark.

MR. GIBSON: I guess my question, to some degree I've heard some comment on it already, but we have an Addendum 2 that's sitting out there at some point which is to be to some degree conditional on this big report, and there's a request here to raise the priority of Amendment 4 and Rhode Island has an interest in doing that.

We would like to see Amendment 4 elevated in priority simply because we have another issue which we can talk about whenever the Chair wants to talk about it, but it bears on our desire to have Amendment 4 expedited as well.

I guess the question I had, would it be possible for Addendum 2 and Amendment 4 to be rolled together in some way? Is there a process by which that could happen? Then everybody could get what they wanted.

CHAIRMAN COLVIN: Jack.

EXECUTIVE DIRECTOR DUNNIGAN: Thank you, Mr. Chairman. Two points. The direct answer to Mark Gibson's question is, sure. They could proceed together or in tandem. If anything, it might imply that it'll be more difficult to get Addendum 2 in place, but, frankly, Addendum 2 is going to be a big and serious issue that could be done through Amendment 4 as easily as having it done by framework action.

The other issue in terms of resources that you have to consider is that a lawsuit takes resources, also. And I think I can safely say that the amount of money it would cost us to defend through trial is roughly equivalent to any of the budget items that you've seen this week for Fishery Management Board meetings.

So, you know, it's not just a zero-sum game. And I'm not saying, by the way, that I don't want to spend the money or that I don't want to litigate the case. I'm just saying that you have to consider that a lawsuit costs you money, too.

CHAIRMAN COLVIN: George.

MR. LAPOINTE: If, in fact, we agreed to this kind of proposal and it went forward and did not pass as part of Amendment 4, do we still have the threat of a lawsuit in the future?

EXECUTIVE DIRECTOR DUNNIGAN: I would believe so.

MR. LAPOINTE: You do?

EXECUTIVE DIRECTOR DUNNIGAN: Sure.

CHAIRMAN COLVIN: Bruce.

MR. FREEMAN: This issue is fairly new to us simply because we haven't been involved with the New England Fishery, but it has some appeal, particularly the issue of conservation equivalency of a size increase.

We could support going through the amendment process rather than the addendum to include this, I think, just from the appeal of this gauge increase. And the reason I say this is from self-interest.

We, also, have looked upon trying to resolve this issue with sea bass pots in Area 5 by perhaps increasing the gauge size in that area along with some re-definition of what a lobster pot is as a way to increase some conservation benefits.

There really is no mechanism in the plan to do that. And if we wanted to exercise that option, we would support looking at this issue on a coastwide basis. I know this is looked at only for the Outer Cape but, quite frankly, I think there's appeal from our perspective of doing this throughout the fishery or at least different management areas in the fishery.

I'm not certain how much more additional time would be required to do the analysis. It may be relatively minor, but it certainly has appeal to us.

CHAIRMAN COLVIN: It seems that there are two issues here and two questions. The first question relates to whether the Board would agree to essentially docket the issue of allowing for conservation equivalency for v-notching in Amendment 4, the Board previously having decided to refer issues to Amendment 4 including

the issue that Mark and Jack did, too, about the equivalency for the 100/500 non-trap gear.

The second issue is the issue of timing as to when and how we would initiate Amendment 4, how that would fit in the context of our other work. And I think that those are different issues that probably require action in separate Board actions.

And probably the latter requires the Board to have more information than it does at this moment about the other things it needs to do, that will come up later in the agenda.

So I'd like to suggest, if it's within the area of consensus here, that the Board consider some form of action on the first of those two questions now and consider revisiting the issue of timing a little later on this afternoon when we have more information at our disposal. George.

MR. LAPOINTE: That's a fine course of action. I guess the other thing I think about in terms of Amendment 4 is that we've considered two issues, and I think there are other states, if we're doing an amendment, there are other states, mine included, who have other issues they would like to have included on that list, so in the interests of equity the idea of a simple amendment with two issues doesn't seem fair.

CHAIRMAN COLVIN: Mark.

MR. GIBSON: One thing that seems to be missing from this proposal is the description of how Massachusetts would get around, as I understand it, their law that prevents them from raising the gauge size unless there's action by other states.

I've heard that now a number of times and I don't see any -- that that's the offset for conservation equivalency for the v-notch. How does that happen?

CHAIRMAN COLVIN: Jim, do you have an answer for that?

MR. FAIR: I do. Certainly, the statute that Mark refers to is still in force in Massachusetts and in order for this to work, that statute would have to be repealed. And we have assurance from the plaintiffs in this case that they will support that.

Some of their local representatives and senators would also probably support that. So, in order for this to work, we need to do that. We need to do it anyway because it looks like other areas that involve our state are going to have different gauges or at least they potentially could within the next couple of years.

I'm thinking specifically about Area 2 which already has agreed to a gauge increase. So for various reasons, we would like to have the statute amended. It would give us full regulatory control. It's not a huge step and I believe that we can get it through this session of the legislature.

CHAIRMAN COLVIN: What's the desire of the Board at this point? Jim.

MR. FAIR: I just wanted to ask if there were any other questions about the proposal. I didn't really spend a lot of time. It's pretty simple, actually. I didn't really spend a lot of time on it. But, again, as Bruce suggested, it may be more appropriate just to make it generic instead of specific and make it --

CHAIRMAN COLVIN: Bruce.

MR. FREEMAN: It may be useful to essentially delay the decision on this issue until later in the meeting because there are other issues that will be raised that may have bearing on this.

I mean, I have no difficulty taking this thing to a vote right now. Again, our preference, we'd like to be applicable to everybody. I mean, this has a lot of appeal to us, and I think in the future it may hold a lot of appeal to what we're looking at as Addendum 2.

But, Rhode Island indicated other issues that they wanted to raise and that may be generic to this issue as well. And my only suggestion is let's look at everything before we make that decision.

CHAIRMAN COLVIN: Jack.

EXECUTIVE DIRECTOR DUNNIGAN: Let me point out, Mr. Chairman, just in terms of alternatives, that you would have, you could make this as broad in scope or as narrow as you choose.

It would be possible to have this kind of discretion given to the states only for a couple of areas, or maybe you would only want to do it, if at all, for the Outer Cape, or maybe you would want to make it applicable in a couple of different areas.

Now there are choices that you're going to have, you know, besides just an all or nothing, and you need to be thinking about that as possibilities. What I'm trying to raise for you this afternoon are possibilities.

CHAIRMAN COLVIN: Harry.

MR. MEARS: Mr. Chairman, recognizing there are a lot of issues to address in this particular agenda item, I would like to reinforce a comment which Jack made earlier in terms of the need to compare and contrast expenditure of time, expenditure of staff, expenditure of funds on litigation versus perhaps constructive ways of looking at area management because certainly, while I hope we're never in the position where legal concerns alone would govern whatever decisions we make, the time and expense involved in litigation easily equals, if not supersedes, what would otherwise be expended and constructive rulemaking. Thank you.

CHAIRMAN COLVIN: Pete.

MR. JENSEN: Well, I guess, Mr. Chairman, from a philosophical point of view, I'd like to see the Board take a positive approach toward this proposal simply in the spirit of what this Commission is all about.

And it is the reasonable way to solve a problem. And also we have subscribed in many occasions to conservation equivalency so, you know, I'm prepared to vote for this motion if it comes to a vote now.

I don't see any problem with bringing it to a vote later if there are other things to be considered, but I definitely think we ought to take a positive approach to this proposal.

CHAIRMAN COLVIN: Eric.

MR. SMITH: Thank you. I agree with Pete. And what I don't know yet is whether Bruce's suggestion is the

better one. I mean, time is short, but we may have the better sense a little farther into the agenda of how things are going to fit together.

I agree. I would vote for it now if it was a motion on the floor. You can look down the agenda and see that Connecticut is going to have an area-specific issue to be discussed, and whether it's better to take them all at once or whether it's important to take them point by point, since we've had the debate just now and it's fresh in our mind, I guess I would look to the Chair which way he'd like to proceed.

CHAIRMAN COLVIN: Well, the Chair made a suggestion earlier that we could split these things and if it was the will of the Board at this time to pass a motion to express taking this issue into Amendment 4, I would not find it out of order.

You have the option, also, of putting a motion of that nature on the floor and tabling it until later in the meeting. Otherwise, I'm not sure when we come back to the issue on the agenda. Pat.

MR. AUGUSTINE: Okay, let's do it. I'm trying to figure out how we're going to make a motion on this, Mr. Chairman, and I will ask either Jack or one of staff to help me with the language as to what it is we're trying to accomplish here.

Let's get it hard copied the board. So, we're going to move to -- go ahead, Bruce.

MR. FREEMAN: Let me just think out loud before we make such a motion. My wording would be to the extent of having the Board start the process for a conservation equivalency for the v-notching by using a gauge increase

-- I'm not sure that's the wording -- but substituting a gauge increase.

But as opposed to the Massachusetts issue which deals only with one area, I'd make it for the entire range of the species. And it may meet their needs, I don't know. I would think it would but -- Jim, did you have a specific motion that you were willing to offer to resolve this issue?

MR. FAIR: Well, it would have been similar to what you just said. Obviously, our proposal that we produced here came directly from the LCMT, so they obviously wrote it for their own particular purpose.

I guess I don't have a problem making it more of a generic proposal. And it would be along the lines of what you just said, that the Board propose to adopt a conservation equivalency -- no, I can't word it. Add it to Amendment 4 is the --

CHAIRMAN COLVIN: Jack.

EXECUTIVE DIRECTOR DUNNIGAN: Bruce, is what you're thinking of doing trying to pass a motion that the Management Board add for consideration in Amendment 4 a measure to allow conservation equivalency for v-notching by gauge increases?

MR. FREEMAN: Yes, I think that would be it. Well, the difficulty I would have with the wording, Jack, is whether at this point we should indicate that the Board should start work on Amendment 4 or whether we should just indicate the Board should develop conservation equivalency.

EXECUTIVE DIRECTOR DUNNIGAN: Well, I think that that was what the Chair indicated might be a separate issue, and the priority of this will fall out depending upon where you go with some other issues this afternoon.

So if you go with the Chair on that point, then you're not going to be able to tie all of this up in one motion.

MR. FREEMAN: Okay, so what you're saying is just direct the Board to develop a conservation equivalency would be the easiest way to deal with that?

EXECUTIVE DIRECTOR DUNNIGAN: Let me see if we can get something up on the Board and if that meets your approval.

CHAIRMAN COLVIN: While that's going up, Jim.

MR. FAIR: I'm almost sorry I brought up the timing issue, but I realized that was going to be a problem right from the beginning when Jack told us that it was pretty much on the back burner.

But the thought that I had this morning, talking to Dave Borden and others, that several states had issues like this that could be packaged together in a relatively simple amendment.

And perhaps with the states doing the bulk of the legwork on it, it may be a fairly simple process to do that rather than trying to include this in a much larger amendment with a lot of other more controversial subjects.

CHAIRMAN COLVIN: Not that this one is controversial. George.

MR. LAPOINTE: If, in fact, we're going to proceed with Amendment 4, which I do not support at this time, dealing with two small issues from two states is not equitable.

Maine has issues. New York has issues. Massachusetts has other issues. And if we're going to address the concerns people have about Amendment 3, we, in fact, have to do that in a broad sense.

We have to go through our normal process. And we have to give all of the states and all of the fishermen along the coast the chance to address those issues. And that's not an easy process.

I mean, we will all remember -- I was on the other side of the table at that time, but how long Amendment 3 took. As much as the Outer Cape Lobster Management Area doesn't like v-notching, Maine doesn't like quarter-inch v-notching.

We'd like to see an eighth or a sixteenth. There are area adjustments we've all talked about. And if we start addressing the needs of people in the respective states, we should all go back to our respective states and say which issues are important to us?

The threat of lawsuit is not -- I mean, you are in court, or you have a much greater threat. I entertain a threatened lawsuit a week. And this action would likely spawn some lawsuits within the state of Maine so we have to balance that as well. This is not a small step. This is not an easy amendment.

CHAIRMAN COLVIN: Pat.

MR. PATTEN D. WHITE: Just a question for Mr. Augustine. Is this assuming that there is a conservation equivalency for v-notching -- it almost seems like a mandate to come up with one -- or is this just to consider that there was a possibility of one.

MR. AUGUSTINE: It would be to consider that there would be a possibility of a conservation equivalency. And I think it should be worded in its broadest sense, as George had indicated.

And George is right. There are several other issues that are going to come up and there are each state-specific concerns that we have here. But if this, in fact, will be broad enough and can be added to without becoming too complex, I think it will address the issue that's on the table right now, again, of conservation equivalency.

CHAIRMAN COLVIN: Bruce.

MR. FREEMAN: Going back to the comments that Jack Dunnigan made, Jack, it seems to me we're faced with a dilemma in that: (1), there seems to be considerable support for developing a mechanism to have a conservation equivalency to v-notching.

And yet you say in order to do that, it requires an amendment to the plan. And then when we get into the amendment, when we get into the issues George was speaking about, there are many more issues and then this process may be very lengthy and so forth.

Is there any way you see of having the Board, perhaps through the participation of states where they don't take a lot of other time and money and staff, of developing a mechanism to do this? But if that is done, is there any way of implementing short of an amendment?

EXECUTIVE DIRECTOR DUNNIGAN: No.

MR. FREEMAN: So it's almost -- we're on the horns of a dilemma here. We see the value of doing it but it requires an amendment. And if that's the case, from Massachusetts standpoint, time is of the essence.

Who knows how long that amendment process that will take. And the question is, then, what value is that to either the lobstermen or the state of Massachusetts or the Commission?

CHAIRMAN COLVIN: Jack.

EXECUTIVE DIRECTOR DUNNIGAN: Mr. Chairman, just so that the Board understands, in Amendment 3, in Section 3.1 there is a list of management measures that every state must comply with.

And then when you get to the conservation, Section 3.2 has other management measures specified on an area-by-area basis that can be revised by addendums or can be implemented by the states based on conservation equivalency.

The conservation equivalency section of this plan specifically says that the states can use conservation equivalency to vary the requirements of Section 3.2 but not 3.1.

This was something that we spent some time on when Amendment 3 was adopted. And it was decided at that

time that the 100/500 and the v-notching should be in the 3.1 category and not the 3.2 category. So now the question is you're being asked to revisit that.

CHAIRMAN COLVIN: Pete.

MR. JENSEN: Jack, I haven't heard mentioned the possibility that an emergency rule could be used. The emergency rule is good for essentially a year as long as we have a full-blown amendment in process and expect to have it by the end of the time. Is that not an option here?

EXECUTIVE DIRECTOR DUNNIGAN: Well, reserving the right to look again at the plan and at the emergency rule language in the charter, my initial reaction is no. Our emergency rule authority is fairly narrowly construed.

And I'm not saying I couldn't develop the case, but offhand it seems to me that it would not be what our emergency rule was intended to be used for.

CHAIRMAN COLVIN: Mark.

MR. GIBSON: I'm prepared to support this motion that's evolving, but I'm sensitive to what George is saying. If we were to go this route, what would be the mechanism by which -- or the time window the states would have to pony up their laundry list of items for Amendment 4? If they thought they were getting boxed in and had to jump on board, how would that happen?

CHAIRMAN COLVIN: I guess Rhode Island actually started that process about a year and half ago.

MR. GIBSON: We did. That's why I'm asking.

CHAIRMAN COLVIN: And I think that -- personally, I think it unlikely that regardless of whether this motion passes and regardless of the existence of the prior Board action with respect to the initiative from Rhode Island on 100/500, that before any amendment would be undertaken, there would be a process and an opportunity for other issues to be brought forward, as we always do, as is part of our process.

I do not believe that we would exclude other issues from being part of a consideration of an amendment if they came forward during our ordinary plan amendment process as it's laid out in the charter.

I think what actions like this motion and the earlier motion do is establish on the record at this time both a sense that there is a problem that needs to be attended to, and this is it in some way, shape, or form, and probably communicate some sense of urgency to some degree.

Although that action with respect to that is obviously constrained by resources, witness the fact that at least a year and a half has gone by and we have not initiated action on Amendment 4 following our earlier motion.

EXECUTIVE DIRECTOR DUNNIGAN: The final approval of starting Amendment 4 just came at the Annual Meeting last year. It was originally requested by the Board in the spring, but it wasn't approved by the Policy Board until October.

CHAIRMAN COLVIN: Okay, I stand corrected. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Could we possibly assume that we could get information from each of the states that have a concern here, including Rhode Island, Massachusetts and so on by our June meeting?

And would that be too close a window? We're talking about possibly a lot of work, I'm not sure. Mr. Chairman, could we get a sense for that? Maybe we could look for putting that on the agenda.

CHAIRMAN COLVIN: I would not want to consider answering that question outside the context of the larger question, when can we afford to begin the amendment for process, for real, anyway.

It's my intention to take comment from the public on this motion. If there is no more comment at this point, Lance, from the Board, then I will do so. I have several more comments from the Board. Will the public be patient for another moment, please. Lance.

DR. LANCE STEWART: I'd just like to add a comment on the biological rationale. V-notching, in all deference to the state of Maine, but if we do have a population contagious pathogen, it just smacks in the face of common sense about contagious vectors and the massive number of v-notching that may occur in Southern New England waters where confinement and transferability of diseases could be a real issue here, and so that any conservation equivalency alternative may have great relevance to the population as a whole.

CHAIRMAN COLVIN: I'll ask the public to be very patient. John Nelson.

MR. NELSON: Mr. Chairman, I just was asking have we got a second to the motion?

MR. FREEMAN: I'll second it.

CHAIRMAN COLVIN: I assumed that Mr. Freeman, in assisting, was seconding, but thank you for clarifying that for the record. Seconded by Bruce Freeman. Pete Jensen.

MR. JENSEN: That was my point, Mr. Chairman, no second.

CHAIRMAN COLVIN: Pat, will you read the motion, please.

MR. AUGUSTINE: Thank you, Mr. Chairman, I will. Move that the Management Board add for consideration in Amendment 4 a measure to allow conservation equivalency for v-notching by gauge increases.

CHAIRMAN COLVIN: Thank you. Pat or George.

MR. WHITE: In answer to what Lance said, I fully respect what you're saying and we've had that conversation with Long Island Sound and stuff before, but this law is not mandatory v-notching. This is possession so it wouldn't preclude other people from continuing on with the process.

CHAIRMAN COLVIN: Seeing no more hands, I'll ask whether there's public comment on the issue. Please come up to the microphone and identify yourself.

MR. JEFF PIKE: Thank you, Mr. Chairman. My name is Jeff Pike. I'm here today on behalf of the Outer

Cape Lobstermen's Association. And we wanted to at least comment on this motion and what was agreed to as a way of working through the process as opposed to litigation.

We certainly would like to have this issue resolved by the Commission, not by the courts, but if we have to, we will continue the legal path. One of the things that we insist on is that any proposal that comes forward meets the conservation objectives of the Lobster Plan.

And the gauge increase that we agreed to, we believe the science shows is two and a half times in terms of conservation equivalency, far beyond what the current plan provides.

We've always been opposed to v-notch. It's not a secret. And we think that states ought to be given the flexibility to come up with alternative measures that, again, have to meet the technical review requirements and provide equivalency.

I thought the amendment was rather simple, that is to say -- or the motion, which is to move v-notching from 3.1 to 3.2. If you like v-notching and you don't want this to happen, you might suggest as my good friend, George, did there, that we have all these other issues to take care of.

And I'm sure there are a lot of other issues but we're in court right now. The judge is waiting to see what happens, and if this Commission is committed to moving forward, working the process and trying to come up with a reasonable solution.

If we're going to give up our options in terms of a legal option, then we would hope that you would put this on fast track and that we could take care of as many problems that are not huge ones but other concerns that states might have.

So, that's the situation we're in. And we'd like to see a strong vote by this Board that we put a v-notch as 3.2 instead of 3.1; that we move forward expeditiously and that you allow participation so this thing can move forward. Thank you.

CHAIRMAN COLVIN: Thank you, Jeff. Are there other comments? Last chance for the Board. Pete.

MR. JENSEN: Well, I guess that raises a question in my mind. There's nothing wrong, I don't think, with having two amendments proceeding at the same time. What about the suggestion, Jack, that we have a very simple amendment that simply moves it from 3.1 to 3.2?

Is that a much simpler process as opposed to embarking on a very broad Amendment 4, and then let's call Amendment 4 Amendment 5 with all the other issues?

EXECUTIVE DIRECTOR DUNNIGAN: I believe that would be a question for the Board to decide in managing its workload as to how you want to proceed to do things. I have to tell you that I have yet to see a simple amendment.

I mean, to be honest, okay. Now it may be that we can put a nice little box around this one or this one plus the 100/500 or that plus two or three other issues.

But I think the point that George is making is it's going to be very hard to be able to do that. And I know that

with respect to what Jeffrey said that in his mind and the mind of the people he represents, we ought to be able to do this simply and directly, but then the question of whether you want to do that is your choice.

And I want to make sure that it's clear here. I'm not afraid of going to court on this matter. I'm sure the plaintiffs are not afraid of going to court on this matter. We're both ready to litigate.

It's going to cost us both a lot of money and we're just trying to find out if there's another way around it.

CHAIRMAN COLVIN: Bruce.

MR. FREEMAN: Gordon, I move this motion be held until Item 12 on the Agenda.

CHAIRMAN COLVIN: Until after Item 12?

MR. FREEMAN: Yes.

CHAIRMAN COLVIN: There's a motion to table.

MR. NELSON: Second.

CHAIRMAN COLVIN: Seconded by Mr. Nelson. Table to a time certain is debatable. Is there comment on the motion? Seeing none, we'll take the question. All in favor, please raise your right hand; opposed, same sign; abstentions, one; null votes. The motion carries, the main motion is tabled until after Agenda Item 12.

We'll move, then, to Agenda item number 8, proposal for revised Lobster Management Program operations. Amy.

Okay, there is a memo that was distributed today from myself and Amy to the Board dated March 27th that describes issues with respect to Lobster Management Program operations and some preliminary recommendations on some operational changes.

Please recall that this subject was introduced at our last Board meeting, and we did indicate that we would get back to the Board with some suggestions and changes at its next meeting.

Before I ask Amy to kind of walk you through this -- and we'll try to do it as quickly as we can -- let me just say one or two things by way of background. You'll recall that your Chairman introduced the need for considering some of these issues at the last meeting, prior to the time that we got as much information as we now have about ISFMP budget issues and availability of funding, so that this was not a preeminent issue in originally identifying the need for some changes.

I think, now, that we have seen the full extent of the reductions in funding on our program, that that only underscores the appropriateness of some of the recommendations that are incorporated here.

Let me say, secondly, that in no way, shape or form are any of these recommendations in any way related to the performance or the prospective performance of any individual, far from it; and I would never want it to be construed that way.

They are, rather, suggestions that we think will help do a couple of things: (1), to have the Lobster Program

operating details a little bit more aligned with the charter and how they are done in other programs, under other Boards, to perhaps make them a little less unwieldy and cumbersome and make things flow and move a little bit better in some cases because fewer numbers of people might be involved; therefore, to hopefully enhance our efficiency, help us address the problems of reduced budget, and increase our overall success in our management program.

With that introduction, I'm just going to ask Amy to very briefly highlight the recommendations in each of the sections. We may or may not choose to act on these today as I understand you have not had this for long and might well want to discuss it with other folks and I appreciate that.

But nonetheless, I'd like to get the recommendations out there, some discussion, and just some understanding at this point of the willingness of the Board to support consideration of these things. Amy.

MS. SCHICK: The memo in front of you does a couple of things. First of all, it identifies the detailed descriptions of the lobster committees according to the ISFMP charter, and that includes the composition of committees and any procedural issues that are included in the charter.

It also includes issues that have been raised by the Management Board that are concerns about how some committees may operate or clarifying the procedures for the Management Board and also the committees, themselves, and how we can help these committees operate more efficiently.

And rather than read through the document, I would like to just highlight where there are three asterisks. Those are where Gordon and I have developed recommendations for the Management Board to consider on changes or clarifications to these committees.

So if you would like them more detailed, you can read through the text about the composition and procedures that have been established by the ISFMP charter, but I will only go over the recommendations.

The first is that the Board should consider reevaluating the Technical Committee membership, including the following options: that one Technical Committee member per active state or federal agencies on the Lobster Board be designated. In some cases there's more than one currently on the Technical Committee.

The second is to separate Technical Committee Subcommittees, and that may be one or more. That would include subcommittees on economics and social sciences and to be impaneled and convened only when necessary, rather than having a large group of people on the Technical Committee that aren't always being used.

The third is predesignated Ad Hoc Technical Committee representatives to assist on deliberations for specific issues. And one example might be lobster health. As we all know the extensive die-off in Long Island Sound, and there may be other issues that we could designate ad hoc representatives.

The second issue that was brought up was a rotating Chair. This is a practice that the Technical Committee has used for the Chair of that Committee, and the recommendation that comes forward is that the Board should consider reinstating the Commission's procedures of the Technical Committee electing its Chair and Vice-Chair from among the members who are willing and able to commit the time and energy required for the job.

The second Committee that's reviewed is --

CHAIRMAN COLVIN: Why don't we just stop between committees and see if there are questions. Are there any questions with respect to the Technical Committee suggestions here? Are there any issues? Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Separating Technical Committee subcommittees, one or more including subcommittee on economic and social scientists, that suggests there's only one right now, or are there two separate groups that have been identified within the members?

CHAIRMAN COLVIN: Well, go ahead, Amy.

MS. SCHICK: Right now there are no subcommittees. Right now there are three Technical Committee members that represent economic and social science issues, and they were appointed by the Committee on Economics and Social Sciences.

What's being proposed is rather than having them as full Technical Committee members, that we designate subcommittees that deal with individual subjects such as economics and social sciences.

MR. AUGUSTINE: Follow-up question, Mr. Chairman. Does that mean that they would be meeting at the time of the regular meetings, or would they, again, meet at a different time? I'm looking at to being cost-effective, would they consist of some of the same members being on both one and the other?

CHAIRMAN COLVIN: Well, I think it's not likely that the specialists in economics and social sciences would be the same as the other members of the Technical Committee, Pat. And I think they'd probably be convened when there were agenda issues that were of relevance to that discipline.

Just, you know, a word here, there are 18. We are liable to pay the travel costs for eighteen Technical Committee members in a management program where eight of us are active.

I don't think that's typical for other kinds of Board Technical Committee interactions and composition. On the other hand, do we want to lose the expert involvement we've had from the economic, social science input or from some of the other Technical Committee representatives who come to us with certain specialties that are very helpful to have?

Perhaps we don't and, hence, the options of creating subcommittees that would only meet when there were issues that were relevant to them or ad hoc experts that might be called in to deliberate with other members of the Technical Committee on specialized issues.

MR. AUGUSTINE: Thank you, Mr. Chairman. To that point, there is no question that this seems to be the right way to go.

CHAIRMAN COLVIN: Bruce.

MR. FREEMAN: In this issue, Gordon, the rotation of the Chair is creating some problems for New Jersey. As indicated, the process has been simply to do this from north to south, and we're reaching a point where we're not certain we can make that commitment for the Technical Committee Chairman.

It's been a difficult time for us and I think in this instance it would be much more appropriate to have an election where someone could make the commitment so it fits in well to our problem.

CHAIRMAN COLVIN: Yes, I'm glad to hear you say that. Let me say this, and Ernie is not here, but Eric can certainly speak to this. The last two Chairs of the Technical Committee have been from Connecticut and New York and it came at a time when, among other things, the Technical Committee was trying to work with a Stock Assessment Subcommittee on this behemoth document here that took so long to produce and is so complex.

It takes a lot of time to be the Lobster Technical Committee Chairperson. It takes a major commitment of time. And it isn't just the time, it's the nature of the work. It is very frustrating.

There are a lot of people involved, 18 Technical Committee members, 14 Stock Assessment Subcommittee members, all of whom have their own ideas, most of them very strongly held.

You've got to deal with the Board Chairman, staff, and we're not always the easiest people to deal with, except for Amy. And it is a very demanding job. And the one thing I want to be sure of is that whoever gets that job is going to be somebody who didn't get it because they rotated into it and their state is telling me that they don't have time to commit to it, but is somebody who is going to be available to do the work, and that's very important.

And I appreciate your candor, Bruce, and if I were in your shoes, I would probably feel the same way. As a matter of fact, now that I think of it, I am in your shoes and I do not wish the current Technical Committee Chairman to have to stay any longer than his current assignment dictates.

And notwithstanding me, I think all things considered, how he came to this job unexpectedly, as a brand-new employee, a trainee, because of the resignation of the last Chairman, that our current Technical Committee Chairman has done a wonderful job and has exceeded all my expectations that I could possibly have had for somebody in that shape.

Remember, this guy had worked for us less than a year when he became Lobster Technical Committee Chairman out of college. I think he did a great job. And he's not here so I can't make him blush, but it's tough.

MR. FREEMAN: I think one of the issues is that he was new and didn't have other responsibilities. He was able to devote his time, but --

CHAIRMAN COLVIN: Oh, contraire. But at the same time our other lobster biologist left, Bruce, so it was only him.

MR. FREEMAN: But Carl did an excellent job. And judging with the issues he had to deal with, I agree, he did an excellent job. Our concern is we can't commit the next Chair to do that.

And that worries me because it's a demanding position. And if the work is going to get done, that person has to make that commitment.

CHAIRMAN COLVIN: Any other comments on the Technical Committee stuff? Eric.

MR. SMITH: Thank you. Your points are very well taken, and that's why I kind of like when we know going in it's going to be very large, very complicated, very contentious.

That number 2 at the end of the section on Technical Committee is something we really, seriously ought to consider.

Sometimes having someone brought in, the hired gun to keep everybody happy and get the job done, leaves the state staff and the federal agency staff able to do their work and basically have the Chairman be a traffic cop and a coordinator.

CHAIRMAN COLVIN: I think that's a recommendation that appears under the Stock Assessment Subcommittee. It could also be considered as an implementation tool under the Technical Committee, particularly if we didn't get the kind of commitment that we needed. Eric, are you missing pages?

MR. SMITH: Yes. I think so because my note to myself was what's missing? Now I know. Thank you.

CHAIRMAN COLVIN: These pages are numbered so you should be able to tell, Eric, what you're missing.

MR. SMITH: Well, I still like my point.

CHAIRMAN COLVIN: The point is very well taken. Pat.

MR. WHITE: Well, to that same point, Mr. Chairman, I guess when I reviewed this before, my question was -- and you're the perfect person to answer that -- is what kind of expense would you then put to this person; what it costs the Commission, then, to do the job that you would estimate that Carl has done?

CHAIRMAN COLVIN: It's hard to say because the time period we just went through with the preparation of the Stock Assessment Update may be somewhat unique.

MR. WHITE: Do you think it's going to get easier?

CHAIRMAN COLVIN: It may be less time consuming than it has been during this last six months while that was being produced. I certainly hope so, not that it's not going to continue to be very challenging, it will.

And we have a huge challenge upcoming when we get the Peer Review to take the stock assessment conclusions and convert them into Addendum 2. That's going to be a real challenge for the Technical Committee and it's Chair as well as all of us, so I would have to think that if we were going to hire somebody to put in that amount of time, we'd have to be talking in the minimum \$15-\$20,000 a year range for somebody to work on it part time and perhaps more than that.

MR. WHITE: That's all I was asking, thank you.

CHAIRMAN COLVIN: Amy, Stock Assessment Subcommittee.

MS. SCHICK: Again, the details of what the Stock Assessment Subcommittee is charged to do is included in that first paragraph. And there were a couple of issues that were brought forward by the Management Board

dealing with the Stock Assessment Subcommittee and that is the composition and the leadership in that Committee.

In terms of composition, traditionally Stock Assessment Subcommittees have had five to eight people. That's standard for all the Commission's Stock Assessment Subcommittees.

On the current Lobster Stock Assessment Subcommittee we have fifteen members so it's a very large group. Therefore, the recommendation that is coming forward is that the Board should consider setting a limit on the number of Stock Assessment Subcommittee members and request the Technical Committee to identify subcommittee membership for Board acceptance, and also that the Board should also consider the importance of preserving a diversity of scientific viewpoints while assuring that each member has expertise in stock assessments and population dynamics.

The second issue of leadership stems from the fact that when we began this stock assessment process, we could not find someone to volunteer for the job of Chair of the Stock Assessment Subcommittee; therefore, we went beyond the borders of that Committee.

And the Board should consider the following recommendation: that having the Stock Assessment Subcommittee elect a Chair from within its membership who is willing and able to commit the time and energy required by the job.

But based on experience, it is possible that a candidate Chair may not step forward under these circumstances; and if this happens the Board should consider: (1), having Agency representatives conferring with their committee members and identifying a person to make the time available to assume the job; or (2), that the Board engage an independent person with appropriate credentials to step forward as Chair.

CHAIRMAN COLVIN: I think Eric was looking at that Item 2 on his earlier comment. I would agree that that could also be an appropriate tool for the Technical Committee itself, and it's likely that in either case it's conceivable that one would have to compensate such a person. Any questions or comments on those recommendations? Pat.

MR. AUGUSTINE: Mr. Chairman, the question is going to be are you going to implement the recommendations yourself or do you need the Board just to give you input to get a sense for the direction you want to go?

CHAIRMAN COLVIN: Pat, I'm hoping to hear comments today that will give us some sense of the Board's feelings about these recommendations. So far, what I'm hearing and conceiving is some general support for them, but as I said at the outset, I suspect that you'll want to go home and talk to people about them, perhaps talk to your Technical Committee members, some of your advisors.

And so I think where I would be heading with this is to give the Board a reasonable period of time in which to write back to us to advise us of any of the recommendations that they would object to or any changes they'd like to see in the details of any of the recommendations and look towards implementation of final changes around about the time of the spring meeting, the June meeting, which I think is going to be a sufficient amount of time to accomplish most of this. Jack.

EXECUTIVE DIRECTOR DUNNIGAN: Yes, and I think this may have been said, Mr. Chairman, but, as a

general principle, in terms of organizing the Commission's affairs, it's very important that we keep a clear understanding of what is science and what is policy.

And I know that all of you states sitting around the table are afraid to have things going on where you don't have "your" person there. But as a matter of fact, if scientists are doing science and not policy, you should be able to be comfortable with that.

And you shouldn't have to have people on a Stock Assessment Committee as a defensive measure. You should be putting people on there who are qualified stock assessment scientists, who are going to be able to contribute to doing the assessment.

And it's a working committee. It's not a review committee; it's not a policy committee. And I can't imagine how eight people, even, could do it. To me, it's got to be -- in order to be a real "roll up the sleeves" and working committee, it's got to be smaller. It's the same attitude, I think, that we need to adopt towards Plan Review Teams.

CHAIRMAN COLVIN: Jack, you're quite right, but let's be candid here. We have a stock assessment before us that took a very long time to produce, and part of the reason that it took such a long time is that there were very strongly held differences of opinion and disagreements among some of the people that were involved in developing it, such that by the time we got to the end it needed to include -- and frankly it may actually be a positive that it includes some minority opinions because consensus, in lobsters at least, it is very clear that consensus doesn't exist, not scientifically.

It just doesn't. And there has been concern along the way that differing viewpoints were not always appropriately considered. So, we can make a lot of cosmetic changes in how we do things and we can talk about separating science and policy and everything else, but the job won't be done when that happens.

The job won't be done until we also look to the process of scientific and technical advice and assure that the process of developing that advice is fully respectful of all of the opinions that are brought forward and that, in fact, the Board, the managers have the advice of all of those opinions, and that some of those opinions are not shunted aside and shouted down and withheld from us.

To be honest with you, it may well be that some of the reason that we have 15 people on the Stock Assessment Subcommittee is that some members may have felt that that was necessary in order to make sure that all of those viewpoints emerged at the end of the process.

I think we can do better than that. I think we need to do better than that. But we need not to lose sight of the fact that what's one of the things we're trying to achieve here is to get a very full airing of all the scientific ideas and to have all the various options and differences of opinion brought forward.

Alternatively, we could just order them all to agree. Somehow I don't think that's going to work. AP.

MS. SCHICK: In dealing with the APs, a lot of the issue that's been brought up about the Advisory Panel relates to the interaction or lack of interaction of the Advisory Panel and the LCMTs.

Lobster is very unique in its public participation process because we have two public advisory groups, the Advisory Panel and the LCMTs.

And the roles of those two different groups have not always been clearly explained and there have been questions from within the Panels and amongst the Board as to what the roles of these two groups are; is it necessary to have these two groups continuing to meet, so I'd like to go into a little bit more detail about their roles.

The Advisory Panel was established to advise the Board on coastwide issues. And in that sense, examples would be: reference points, non-trap gear, whale interaction issues, something that's going to affect the entire coastline.

On the other hand, the Lobster Conservation Management Teams deal with area-specific measures in making recommendations for additional management measures or refinement of management measures within the seven lobster conservation management areas.

The AP may be directed by the Board to look into issues that have an impact coastwide. For example, if there is a gauge increase that was recommended by some LCMTs but on different time schedules, that's going to have an impact on the coastwide lobster fishery.

The AP would be directed to comment on that to the Management Board. But it's a different role than the LCMT and so one of the recommendations is that the Board should consider developing a standard procedure that would better define the roles of the AP and the LCMTs and the LCMT process and how those groups interact.

The second is dealing with the Chair and, again, as Gordon stated at the beginning, this has no bearing on the people that have served in these positions, but the Commission has a standard procedure where the Chairs are elected to these committees every two years and, thankfully, Ralph has sat in that position for five years and helped us out.

But the Board should consider recommending to the Advisory Panel that a new Chair and Vice-Chair be elected following the standard Commission procedures.

Another issue is composition. There is a description in the tables of the composition, attendance, when people have been nominated to these positions, and there's some information on the distribution of membership on the Advisory Panel, what roles they fill in terms of commercial, recreational, trap, non-trap, inshore, offshore in representing the states.

And the Board should consider reconstituting and redistributing the AP membership under a smaller total membership in light of the fact that we have the LCMTs, which is a very large group of individuals, that are making recommendations to the Management Board from the industry perspective and from a local management perspective.

Another issue is the duration of appointment and attendance. And the Board should consider recommending that each state review their AP nominations and make any recommendations for changes. Do you want me to go through LCMTs before we come back?

CHAIRMAN COLVIN: Yes, why don't we.

MS. SCHICK: Okay. When I introduced the APs, the same issues apply. What are the roles of the AP versus

the role of the LCMT? And some of the same issues is membership, that the Board should consider recommending that each state review its LCMT nominations.

There's a typo in there, it should be LCMT under that recommendation. The second is just identifying the fact that the states provide the support for the LCMT meetings. That's making the meeting arrangements, developing the meeting summaries and making sure everyone is informed as to what's going on in the LCMTs.

That's different than the Advisory Panel process where Commission staff takes care of all the meeting arrangements and staff support. A third issue is procedures, and the Board should consider developing a standard procedure that would better define the roles of the AP and the LCMTs in the LCMT process.

It's the same recommendation from under the Advisory Panel. Another recommendation deals with the Chairs of the LCMTs. The Board should consider recommending that each LCMT elect a Chair and a Vice-Chair to lead the LCMT and to attend Board meetings.

Amendment 3 identifies that the Commission will reimburse travel to the LCMT Chairs so they're able to come to Board meetings and represent their LCMTs. That's it on AP and LCMTs.

CHAIRMAN COLVIN: Okay. Any questions on those two sections? George.

MR. LAPOINTE: The relationship between the AP and the LCMT is more one of efficiency and trying to reduce confusion among differing members than it is of cost, isn't it, although there is some cost with the LCMT process, as well?

CHAIRMAN COLVIN: The issue presented here, yes.

MR. LAPOINTE: Right.

CHAIRMAN COLVIN: Right, focus on roles. Okay, the last item is PRT.

MS. SCHICK: The last issue is the Plan Review Team and, again, it identifies the roles of the PRT according to the ISFMP charter, and just a statement that the PRT has been underutilized in the recent past.

The Board has directed staff to work on things when the PRT may be the more appropriate body to provide recommendations to the Management Board on a variety of issues.

And, therefore, the Board should consider reviewing the PRT membership to insure that there is expertise and willingness to participate on the PRT, and that Board members should solicit volunteers from among their staff to nominate to the PRT.

These members must be willing and able to commit the time and energy required. And also the Board should consider designating a PRT seat for the Technical Committee Chair or another willing Technical Committee representative to bridge the gap between the PRT and its activities and the Technical Committee.

CHAIRMAN COLVIN: Yes, Bill.

MR. WILLIAM ADLER: Amy, you've got lists of every team, committee, plan, thing here except the PRT. Who's on the PRT and are they -- who's on that?

MS. SCHICK: The PRT is Chaired by Commission staff for that management program, so I serve as the Chair to the PRT. We have a member from Maine, Carl Wilson; a member from Massachusetts, Bruce Estrella; and a member from New Jersey, Bill Andrews. And that's the group right now.

MR. ADLER: All right, so now the PRT, then, some of the same names that are on the Technical Committee?

MS. SCHICK: That's correct.

CHAIRMAN COLVIN: I have indicated to staff that I feel pretty strongly that we need to establish and operate a Plan Review Team consistent with the charter. There are lots of reasons why it's appropriate to have the actions that are -- appropriately the PRT's under the charter are done by a team rather than by an individual staff member.

I think it's appropriate for us to follow the charter and do that. Notwithstanding the fact that the staff is so willing to do all the work that they have to do plus extra, this is a case where that work needs to be shared. Now the fact is the PRT has not been active, and so I really have no idea whether those three or four individuals, other than Amy, are conscious of their membership on the Plan Review Team, but this is one that I would ask that, along with the other things that the members of the Board evaluate, would they please give active consideration to any recommendations or appointments they would recommend be made from within their agencies and organizations to an operating Plan Review Team.

And if there are members that you just found out about, that you didn't know about before, and you think that maybe you'd rather they not be, please notify us of that, as well. Dieter.

MR. DIETER BUSCH: Mr. Chairman, if I may make a comment on the Tech Committee and the Stock Assessment Subcommittee membership, with so many participants or at least participants in name, this has been part of the problem.

I understand what you were saying about having the agencies represented and the importance of feeling comfortable and ownership of any products, but by having more than one member, in some cases the membership participation isn't equally distributed among those state members; and then when something comes up, it's like somebody walking into the meeting right now and raising their hand and making comments about stuff that they haven't really participated in.

It's probably much more effective to have a smaller number of participants in the kitchen, and they are in there until the product is done and they may be sweating and frustrated, instead of having people come in and go all the time. Thank you.

CHAIRMAN COLVIN: Thank you, Dieter. I want to just emphasize one other thing, too, with respect to the suggestions that are offered on Technical Committee membership.

We don't mean to suggest that these are necessarily one per agency, but rather one per voting Board member. And a state, for example, might choose a university scientist as the most appropriate representative of the state, even, you know, above and beyond a state agency employee.

That might well happen, and that would be perfectly appropriate. Without getting down to this Board so much, I know that in the past, for example, there have been a number of times when the Commonwealth of Virginia has chosen a scientist from VIMS to be its representative on the Technical Committee for striped bass, to give one historic example.

That could seriously be done, and we hope that it would be considered in some instances. But we do have, as you'll see here, quite a very large complement of Technical Committee members and probably more than we can get work done with. Pete.

MR. JENSEN: Well, I guess from my point of view, Mr. Chairman, the memo makes a very strong case that there ought to be some changes and I, for one, am willing to give you as much latitude as you think you need and to support you in your decision.

CHAIRMAN COLVIN: Thank you, Pete, I appreciate that. I do know that in some instances -- and the key instance is the Advisory Panel composition -- the Board spent some time and energy and a little bit of wrangling to come to a current complement, and I'm not comfortable dissolving that unilaterally.

I want to hear back from the Board with their recommendations on those things. And certainly with particular reference to the Advisory Panel, I think that Board action is necessary before there are changes in its membership or its composition.

So, what I'd like to do is to come back to what I said at the outset and invite any of the Board members to please give us back comments with respect to these recommendations.

Please, at a minimum, tell us which recommendations you have difficulties with, either as specifically as the recommendations or specifically with respect to our suggestions about the changed composition of some of the committees, any additional recommendations you might have and try to put us in a position where we can be prepared to put this to bed at the time of the spring meeting. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman, one final comment. I think the Chairman of the Advisory Panel is to be commended for his staunch efforts in keeping the Advisory Panel going.

I know he's been very effective and he's made some excellent presentations at the meeting here representing your group. You're to be commended.

CHAIRMAN COLVIN: Absolutely. Thank you. Anything else on this agenda item? Public comment. Bonnie.

MS. BONNIE SPINAZZOLA: I'd just like to make a comment. On the Area 3 LCMT, I notice that a technical advisor is not listed, and I'd just like to make a note that at the Area 3 meeting we actually were lucky enough to have Bruce Estrella, Mark Gibson, Tom Angel and Joe Idowine as our technical advisors.

I don't know if that's something that you'd like to list, but I would like it to look as though we did have some technical advice. And then the other question is as far as the PRT is concerned, I don't know even if there have been meetings held, but I haven't gotten any notice of that. In the future would it be possible to make it noticed?

CHAIRMAN COLVIN: That's not ordinarily done, Bonnie, although I think this is a case where the PRT, as I said, hasn't been particularly active. The PRT tends to be a body that conducts a lot of its business by mail, conference call, shared assignments for writing and reviewing things.

And when they do meet face to face, it's pretty rare and it's usually like at headquarters or on the site of a meeting. Amy.

MS. SCHICK: Just a comment on the activities of the PRT. The PRT is just a working body for the Board. We do background, collection of information and we present options to the Management Board.

There's no policy decisions. There's no positions that are put forward. We just do the work of the Management Board so that anything that the PRT does is aired through the public process at all the Management Board meetings.

There are no decisions made at the PRT level. It's just a working group to do the background, historical work of the Management Board.

CHAIRMAN COLVIN: Right. They prepare the annual plan review, which is a written kind of status report on the Management Board. Nothing else? Good. Now we're all the way through Agenda Item 8.

MR. LAPOINTE: Oh, Gordon, one other thing.

CHAIRMAN COLVIN: George.

MR. LAPOINTE: If you want this for the June meeting, should we have it to staff three weeks prior, two weeks prior so that, in fact, we have a deadline so Amy can harass me when I miss it?

CHAIRMAN COLVIN: That's a good point, George. The June meeting is early in June, I believe. Then, I think it would be appropriate to have it in around the 20th of May or thereabouts. That will give us some time.

We have a bunch of other issues. There is no way we can conclude them in less than about at least another hour of work is my guess. Jack, do we have any problems with room availability?

EXECUTIVE DIRECTOR DUNNIGAN: No.

CHAIRMAN COLVIN: Is there any reason or is there any Board member who believes we shouldn't try to stay here and work our way through the rest of this? Okay, the next item is the NMFS status report.

And I think the initial item there is the review of the response letter from Pat Kurkul. How do you want to handle that? Harry, do you want to run through that letter and then we'll see if we have any questions.

MR. MEARS: I already received a request to keep this short so I will attempt that. I believe the letter to a large degree is self-explanatory. There were two recommendations which were made by the Commission with specific regard to an increase in the gauge in all Lobster Management Areas with the exception of Area 1; and secondly, redefining the limits for the black sea bass pot fishery in Area 5.

The bottom line is that the Service responded that it finds itself to be in a dilemma with each of these issues. It

recognizes the importance and sensitivity not only to the Commission, but to the involved industry sectors.

It also indicates that each issue will be identified and addressed accordingly in the forthcoming federal rule-making procedures.

With regard to the gauge, one note I may make is that this is a particularly troublesome issue for me personally as a Board member, because it certainly has been a measure which I have supported since development of Amendment 3 to the plan, which has been particularly documented to be one of the more effective management measures from the toolbox.

At the same time, the whole basis of our federal rule-making under the Atlantic Coastal Act was predicated, the action in federal waters alone cannot achieve the stock rebuilding goals for American Lobster.

So, again, the letter reiterates the position of the importance of an indication from the Commission as to whether or not a gauge increase will, in fact, be included or not be included in the next action to the interstate plan, whether it be Addendum 2 or Amendment 4.

The other issue concerning the waiver for adherence to the trap tag requirements and the trap limit requirements, the venting requirements as they may pertain to the black sea bass fishery has been responded to on a couple of other occasions with regard to the Service's apprehension on what that would infer to the integrity of the vent and, more recently, the trap limit regulation in the lobster fishery.

There are also various assumptions the Service makes regarding the Commission's recommendation in this regard. Number one, that inherent is the request that the involved federal permit holders would intend to fish the full complement of allowable lobster traps, 800 lobster traps, at the same time complying with the lobster vent requirement, but at the same time receive a waiver for another type of trap to be fished in federal waters that need not comply with the vent size requirement, that need not be tagged, and also that need not be limited in terms of the total numbers of traps.

We are committed to summarizing the available information which we have and the request as we understand it. However, to facilitate this evaluation and to give it the fullest consideration which would be possible stemming from the Commission's recommendation, I would request the Board to consider providing additional information to the Service concerning whether, in fact, what I've just stated is, in fact, the case with particular regard to the number of traps which are deemed to be a minimum number of traps deemed essential to maintain economic viability in the black sea bass fishery.

The Board should consider, perhaps, any information on the seasonality of the involved fisheries, whether or not there are particular months of the year for which a waiver is particularly being requested or whether its a year-round request for a waiver of a certain type trap design with no limits on tagging, with no limits on trap numbers, and with not adhering to the lobster vent limitation.

So, once again, we will be evaluating the request in the forthcoming federal rule but this could, in fact, be enhanced by any additional information which could be provided to the Service at this time concerning this request. Thank you.

MR. LAPOINTE: Are there questions of Harry? Pete Jensen.

MR. JENSEN: Well, Harry, as you know very well, some of us are still having a great deal of problem understanding why you're doing what you're doing.

And I'm intrigued by the sentence in Kurkul's letter that says, "NMFS can only implement regulations that are compatible with the ASMFC Plan."

And I would respectfully submit that you might have ignored that issue up to this time because many of the things being implemented are not compatible in the view of many of us.

So, you know, I understand that you want more information, but that just simply seems to prolong the argument without getting to the core of the problem. For example, in our case, this Commission endorsed Maryland and several other states as de minimis states.

Yet that's being ignored by the Service by imposing some unrealistic trap limits, some unrealistic tagging requirements, and a choice for fishermen to either quit bringing in lobster as an incidental catch or give up their lobster permit. And I cannot see how you can interpret them as being compatible with the intent of the ASMFC Plan.

MR. LAPOINTE: Bill Adler.

MR. ADLER: Harry, I concur with Pete there. On some other issues where the ASMFC Plan was clearly moving ahead and had been approved with certain things in it and all that was asked of the federal people, and I understand it isn't you, there's someone else somewhere, but you didn't just take the ASMFC Plan and stamp it at NMFS, which would have been helpful, I think, in being compatible.

For instance, I was disappointed in the Area 3, after they had gone through all the work that they went through with their historical participation and then with the Atlantic States approving it that you didn't move -- not you -- NMFS didn't move to implement that or at least do something in your box of magic tricks, so that all the work that they had done wouldn't be thrown away or at least postponed or God only knows where it is.

I also think that this proposal that we put forth to NMFS at the last meeting having to do with at least put the gauge increase in your proposal to take to public hearing, whatever you call that, whether it's the EIS, the DEIS, the ITQ, whatever -- the idea of at least putting it out in your public hearing of what do you think, people, of a gauge increase because the discussion that we had last time was that it takes the federal process so long, and it takes Atlantic States a lot less time to do something, so you don't have another disconnect down the road should the Atlantic States go ahead with some gauge increases that "it's sort of in," which is what we heard on a lot of the things before, "It's sort of in, but the Feds are doing their thing now to catch up."

And the idea -- and this is why I disagreed with Pat's thing that you can't put the gauge increase at least into a public hearing document, I disagree with that. I think it would be good to put it into a public hearing document if you were doing a public hearing document, so that at least you can get a position or some comments, then you'll have that section.

You may decide not to go, if her concern was the ASMFC might not go, and that's fine. If that were to happen, you just drop it. But at least it was just to get the process going.

And I was disappointed in Pat's referral of that saying, geez, we can't do it until you do it. And even though

when you do it, then we've got to do it, but when we do it -- you getting all this, Joe -- but when we do it, it's going to take us "x" number of forever to get it done, et cetera, et cetera. So, I'll stop.

MR. LAPOINTE: Bill Adler, can you tell me who's on first? Other questions? Harry, response?

MR. MEARS: We've had a lot of this type discussion on prior occasions, and it depends on how much time the Chairman would like to devote to this particular topic, but one important clarification, Bill, is in fact the final paragraph in the Regional Administrator's letter does, at the very least, imply that a gauge increase will, in fact, be in the next federal rulemaking process, notwithstanding the issues at this time that we associate, not the least of which is law enforceability issues.

So, the expectation should be that, in fact, public comments will be requested on that particular issue.

MR. ADLER: That's good. I wish they had just said it instead of implied it, but thank you.

MR. LAPOINTE: And on the black sea bass issue, is there any more clarification that's required? Any other comments?

MR. LAPOINTE: Other comments on Pat Kurkul's letter? Other business with the National Marine Fisheries Service? Bruce.

MR. FREEMAN: Harry, do we have -- I know we ask this question all the time, but do we have any further indications of when the draft EIS will be out for public review and comment?

MR. MEARS: Not other, Bruce, than it's currently in process. One update I might provide, Mr. Chairman, I will respond to additional questions, if there are any, given the limited degree to which I can respond to those questions.

But with regard to the state/federal trap tag agreements, we now have four in place. We have agreements with the states of Massachusetts, Maine, Connecticut, and New Hampshire.

For those of you that might remember the associated discussions, one of the primary goals and accomplishments of these agreements were to remove the requirement for two tags from individual lobstermen.

We also have an interim agreement with the state of New York, so federal lobstermen fishing in Long Island Sound will not have to acquire a tag from both NMFS and the state of New York.

That, at the same time, is addressed in a more generic agreement that we have with the state of Connecticut with regard to Long Island Sound.

MR. LAPOINTE: I'd like to give my personal thanks to Harry for helping us in Maine in a very short amount of time in getting that MOU together as well. Bruce, you had another comment?

MR. FREEMAN: Yes. Harry, this pertains to the recent motion that the Board just passed early on this afternoon dealing with New Jersey's dilemma.

What I didn't indicate to the Board is that if, in fact, New Jersey went forward with its regulations, we'd have two different tags.

The fact that we will use the federal regulations will negate that confusion, and we'll simply move forward with only the federal tag. And we've spoken to this about it, but I want this to be part of the record that we will use the federal system as indicated in our letter to you that we do have formal agreement with the Fishery Service on enforcing regulations.

I think in this instance, and Rob Winkle can correct me, we also have joint and cross-deputization of our agents to enforce federal rules and vice-versa. And as I indicated, that arrangement remains in place.

MR. LAPOINTE: Comments from David Borden.

MR. BORDEN: Two quick points, Mr. Chairman. One, I would just make the observation that watching this process today and at other meetings, you can't help but conclude that the issue of gaining simultaneous implementation of regulations is really becoming critical to the process.

We just cannot continue to operate the way we're operating because it causes so much controversy and confusion within the industry. I mean, I personally have been besieged by different members of the industry about all these points that have been discussed all day long here, about the confusion of what regulations apply, what's going to be implemented and so forth.

And it seems to me that at some point here at a future Board meeting, there should be a very directed discussion of how we either change this process, change the law, change whatever we have to change in order to get simultaneous implementation of the regulations. That's one observation.

The second observation is that given the -- this goes back to the letter that the National Marine Fisheries Service submitted.

Since they have raised this specter of enforceability of different gauge sizes in areas, I think there may be some merit in sending a letter specifically to NMFS and NOAA General Counsel that basically asks them for a legal opinion of whether or not we can have different sizes in different areas under the current plan, particularly with a provision that the most restrictive regulations apply and it's on a possession basis. So you may want to ask that question.

CHAIRMAN COLVIN: Does anybody want to follow up on the suggestion that David just made? I apologize for having to step out for a moment, but let me ask, is it appropriate to consider a further communication to the National Marine Fisheries Service on any of the issues that the Board has been discussing here?

MR. JENSEN: Yes.

CHAIRMAN COLVIN: Pete, would you like to initiate that discussion?

MR. JENSEN: Yes, I mean, this game is far from over and there are still an awful lot of loose ends out there, and so I think we ought to document all of this because we're going to end up dealing with them sooner or

later and the sooner the better.

CHAIRMAN COLVIN: Is there a suggestion on how we proceed? Do we need a motion here or does one of the members of the Board want to make a suggestion as to the contents of a communication? Pete.

MR. JENSEN: Well, perhaps just a summary of the minutes of the meeting to bring to the attention of the Regional Administrator the things that still concern us, perhaps that would be one way to transmit our concerns.

CHAIRMAN COLVIN: Is there objection on the Board to having the staff develop such a letter that transmits this discussion, summarizes the major points? It could be submitted to the Board as a draft by e-mail or fax if you don't have e-mail, and then finalized based on your comments?

Is there objection to that approach is what I'm asking? I see no objection. I see indications that most people seem to favor that viewpoint. Without objection, that is what we will do.

Is there anything further under Agenda Item 9? Okay, Item 10, transferability of trap tag allocation. Please recall that Mr. Beckwith brought this issue up at the last Board meeting, and the staff was tasked with developing some analysis and preliminary recommendations with respect to the issue.

That was done and I'm going to ask Amy to run through the staff memo that was developed in response to that charge.

MS. SCHICK: As Board members will recall, the Board did direct staff to look into this issue further. There's some background information presented. The issue is in regards to the die-off that happened in Long Island Sound, and some Connecticut fishermen requested that they have the ability to sell or lease their trap tag allocations as a means to recoup some of the economic losses that they have felt from this lobster die-off.

In the background, Ernie Beckwith had submitted a letter to the Commission, to the Executive Director, on this issue back in December. And the Executive Director did respond with his recommendations on how to proceed.

And his recommendation was to bring it before the Lobster Management Board. Before I get into the alternatives that the Board has in front of them today on how to deal with this issue, I think it's important to note that there are many issues that are raised by transferability of trap allocations, and there's a list of nine of them but this is by no means exclusive and there are probably many others out there that haven't been highlighted.

But this is not a light or an easy issue that needs to be dealt with. I'll go through the alternatives that the Board has in front of them. The first that was requested was emergency action, and transferability of trap allocations would not be appropriate for consideration under the Commission's emergency procedures.

The Commission has taken a narrow view of this application and is using it only to address fisheries management emergencies and doing that in a way that would reduce the impact of fishing on the fisheries resource, so an emergency action is not appropriate at this point.

There are two other mechanisms that the Board could address this issue and that's through adaptive

management and through the addendum process. It would be possible to make this modification through an addendum process.

However, Board members did express their concern about this approach at the February meeting, stating that this is a significant departure from the current lobster management program and it may be more appropriate to do it through an amendment process.

The language for how adaptive management can be done is included in this but the Board is familiar. It would be the same process that we went through for Addendum 1 in terms of public participation and Board consideration.

The time line for an addendum is less than the time line for an amendment. The last addendum took about a year and a half for the Board to get through from start to finish.

And the Board has discussed Addendum 2 that would take place during the year 2000 and 2001 for development and implementation in 2002.

The third alternative is to go through the amendment process. The Board can consider any new approaches to the management program through the amendment process. And it would be initiated by a Board motion requesting approval by the Policy Board to begin that process.

The time line for a plan amendment is highly variable depending on the scope, the controversy surrounding the issues, and how quickly the Management Board would like to move through the amendment process.

Generally, the amendment process takes a minimum of two to three years to go through a full amendment process, a complete rewrite. And, again, the pace of the amendment process can be dictated by the Management Board.

So those are the three options, really the two options, the addendum or amendment process that the Board has to consider this option if they would like to move forward further on the issue.

CHAIRMAN COLVIN: And are there any questions for Amy? George.

MR. LAPOINTE: Yes, a question for whoever knows. Has not the Long Island Sound issue precipitated some requests for emergency economic relief on the part of the U.S. Congress?

CHAIRMAN COLVIN: It has.

MR. LAPOINTE: And what's the status of that?

CHAIRMAN COLVIN: The status at present is that the President requested an appropriation pursuant to Secretary Daley's finding of a fisheries disaster in the supplemental budget which is under active consideration by congress as we speak.

There has been favorable action on the House side. To date, it's less clear what action if any the Senate is going to take, including whether the Senate will even make any agreement to any supplemental appropriations in the current fiscal year, so nothing has been brought to conclusion to date.

MR. SMITH: Could I add to that?

CHAIRMAN COLVIN: Eric.

MR. SMITH: What the Governors had requested, obviously when it came out of Commerce, it was a lowered amount. When it went from the President to Congress, it was the still lower.

At the stage it's at now, it's something like \$6 million to research the issue, try and find solutions ideally, and about \$3.5 million, I think, talked about in terms of low interest loans to the industry which, if you do some quick math, is not nearly sufficient to resolve problems of people who have effectively lost 90 percent of their income in the western two-thirds of the Sound. Just to that point, I thought you should know the frame of what was discussed.

MR. LAPOINTE: Absolutely.

CHAIRMAN COLVIN: Bill.

MR. ADLER: I'd like Eric, and maybe, Gordon, if you could, too, explain it to me. I'm trying to understand how making an ITT or basically a transferrable trap tag ID to another lobsterman is helping the guy other than he gets a couple of bucks that he could otherwise go out and fish his own traps.

But if there's not too many lobsters left, he's transferring it to somebody either who's trying to fish out there, and so then he's going to fish with more traps. I don't understand the advantage here that's gained. That's what I'm missing in this.

CHAIRMAN COLVIN: Well, I guess I can take a whack at it, although I think this originally came from Ernie, and then Eric can amplify on this. This is a proposal that comes out of Area 6, which is a history-based cap program.

There may well be people in that area whose history is not as large as they would like, you know, assuming they intend to continue lobstering.

Frankly, this proposal, as I understand it, would allow the sale of trap tags by people who want to get out to people who want to increase the number of traps that they would be allowed to fish under a history-based system.

And those who got out would go out with the dollars in their pocket that were attributable to so much of their history as they sold. I think it's as simple as that.

MR. ADLER: So, do we have one person becoming a multifid qui-lobsterman out there by buying up the surrounding tags?

CHAIRMAN COLVIN: The possibility could exist. Eric.

MR. SMITH: Mr. Chairman, obviously, I have a great deal to say on this subject. I won't take very long but there are a number of points. I was waiting until you had gotten questions of Amy before I explain our view.

CHAIRMAN COLVIN: I understand. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. I was referring back to the letter of December 16 to Ernie from Jack who specifically cleared all those points that Amy went ahead and reiterated for us, but more specifically on a second page where it talks about a narrow view of using the definition of the emergency changes and so on, and it goes on further to say, "It could also be a problem if concentrating tags among fewer fishermen resulted in increase in effort on a localized basis."

And just that statement in itself, as stated here, plus we're suffering with lobstermen in Long Island Sound, as you know, some of them are our friends and people that we know.

But in view of the fact that the government has taken some action, we are in a declared "state of emergency" such as we'll hopefully have funds coming soon, it would just seem that to go any farther than we are right now at this without taking it under consideration as a part of Addendum 2 -- and I'm not sure anybody has stated we want to do that, as Jack has indicated here -- I would like to put further discussion off until June unless someone has a stronger opinion. I'd like to hear Eric's response to that, please.

CHAIRMAN COLVIN: I'd like to just ask one question for purposes of my own clarification and that is is the staff's advice that -- well, I recall earlier when we were talking about the Outer Cape situation, that the staff was able to tell us unequivocally an amendment would be required to do this.

Is the staff's advice with respect to this issue that an amendment is required, or is there any possibility that the charter would allow an addendum here? I think we need to kind of hear that. It's not clear to me.

MR. SMITH: Mr. Chairman, you might wish to hear what I have to say first so you understand the nature of our request. Again, I've been holding back for questions of Amy based on her document, but some of these things, before we go down a certain road, I think you ought to hear what Connecticut's view is.

CHAIRMAN COLVIN: Very good. Go ahead, Eric.

MR. SMITH: Okay, thank you. Thank you all. It's late; I'll try to be brief. Ernie Beckwith wishes he could be here with you to discuss this issue and, frankly, so do I.

His heartfelt request Friday was try to explain why we so badly need approval to begin an emergency action on this issue. And that's what I intend to do, and I wanted to state it at the outcome so you understand where we're coming from.

It is a very thorny issue. You can see it in the document. I can already hear it in the comments. And as I read through the minutes, I realized that people have already weighed in in their preliminary views.

I would also point out it's a very localized issue, at least insofar as the western half of Area 6 is concerned. And it, therefore, has very little ramifications to other areas.

It's extremely important to Connecticut. It's a huge economic disaster in the western two-thirds of Long Island Sound. Many people need to get out and they can't because of our license moratorium of five years' duration and because of non-transferrable pot allocations.

Clearly some few others, of course, would like to build on what they already have. There will always be a few

wishing to capitalize on other's misfortunes. The greater need in our view is to provide the way out for those who desperately need to get out.

The question is how? And this raises two other questions, and my first one is is it absolutely clear to the Board that the plan must be changed by an amendment or by an addendum or by an emergency action?

I understand and I read carefully Jack Dunnigan's letter. It was never so clear to me, though, that the Board just couldn't, with all due respect to my friend, Jack, simply say, "Jack, we don't agree with you; we think the emergency action process could be used."

Unfortunately, I don't know if that debate was had in the past. If the answer is "yes", that some plan amendment action has to be done, then the second question is can we do it by emergency action?

To be of any assistance to fishermen, this change needs to be pretty expeditious. I mean, the impact is now; it's not a year and a half or two years away. We are very concerned, and I want you to know this sincerely, about any escalation of fishing effort.

And the regulations we have drafted so far, which start by saying "upon approval of the ASMFC", have a number of caveats that I'll go into in a minute that are our way of dealing with the escalation of effort which is a real potential in this type of a process.

Our regulation has three key ingredients. It's one year only. It would sunset on June 1 of 2001. That's to get people over the hump of the immediate crisis. It's active participation only.

It doesn't make any difference if you had a license. You have to have fished three of five years, one of which was in our qualification period that ended about two years ago, now, so it's not open to somebody who just has a license and a bunch of pots and thinks he's going to make a killing.

It has to be an active fishermen. And the only thing he can transfer is pots that he actively, by catch reports, shows that he fished. I won't belabor you with how Area 6 did their history-based allocation, but in some cases people got an allocation based on two different types of documentation.

We gave them the more liberal of the two. That was before transferability. A person could have an allocation of 500 pots; he could have actively fished 400 or 200; the regulation says you can only transfer the ones you can show that you fished by past catch records.

Finally, it has an upper cap of the high number. It's the highest allocation of anyone that we have had, and clearly this has been a discussion point even in the Department. No one could amass more than 5,000 pots or one and a half percent of the total pots allocated, which turns out to be about 5,000 pots.

The one and a half percent is if we have to reduce the total amount of pots out there in the future, then the amount that could be transferred up to will decline proportionately.

This is a very important point. If we hadn't adopted an 800 pot cap, which a number of other areas have done, we would have allocated 480,000 pots to all of our license holders.

By adopting a history-based system the way we did, we allocated about 325,000. We think we've done a great

deal in terms of containing effort in the way we've done it. I mean, my moustache is going grey over the logistics of doing a history-based system; but we did that because it has a more conservative approach.

And we don't want you to lose sight of that. We're ahead in that regard but we're concerned and we've addressed activation of less active potential effort. Finally, we believe that it is an Area 6 issue at worst and, in fact, it's largely a Connecticut issue so it's very contained. Another point, our legislature right now is considering transferrable licenses. I wanted you to hear that from me in the context of that discussion. We have commented and they have included language that has very aggressive active participation clauses in there as well, so a license that was not active for three of the five years, five most recent years, could not be transferred.

Again, it's only active people. And it's in accommodation of this crisis mode where people say, "I have to get out but I can't because of the statutes in place."

So to summarize, we believe the effect of this change would be localized. The way we've designed our regulation will minimize increases in effort. The fundamental history-based plan is far more conservative than a flat-cap.

And the need to aid the public health, that is the income loss of the affected fishers, is paramount in our view. Now those are brief remarks. I do have a motion here, if you'd like, so we can have something to focus on, or you could have questions and debate. It's your pleasure, Mr. Chairman.

CHAIRMAN COLVIN: I don't have a problem with putting the motion on the floor now.

MR. SMITH: Okay. I would move approval of development of an emergency action by late summer of the year 2000 to allow Connecticut to be able to regulate individual pot allocation transferability.

CHAIRMAN COLVIN: Bruce has a question.

MR. FREEMAN: Eric, the issue to date has been Connecticut. You do share the Sound with an adjoining state. And I'm curious, Gordon, though this doesn't influence my vote, but does the same issue exist in New York, where fishermen feel that they need some relief by having this transferability?

CHAIRMAN COLVIN: Well, we have not had the same impetus in terms of fishermen coming to us and asking us to do this. Maybe Connecticut is just a little farther along than we are in terms of trap tag program implementation.

That could have something to do with it, I don't know. I will tell you if you pass this motion, there'll be interest in New York tomorrow.

MR. FREEMAN: One of the points that concern me, both, Gordon, you and Eric can respond, but it appears to me that if this is approved, you could well transfer effort from the west to the east.

And I suspect if that is true, there'd be considerable concern from the public over that, at least of the fishermen in the east, having that occur. Some will be advantaged and some disadvantaged.

And, therefore, it appears that that debate is not going to be heard. In other words, we'll take that action then people will come screaming at us, "Why'd you do this!"

And I don't know how to answer that. Maybe it's not an issue, but I think it would be.

CHAIRMAN COLVIN: Eric.

MR. SMITH: Actually, it's a great question. We've had two public meetings and then two public hearings on this subject since mid-January. And that's what we anticipated.

And, in fact, the comment at these meetings is virtually unanimous that everyone, regardless of area, want this opportunity. And they probably want it for different reasons, but very few people -- I say virtually unanimous, you never get unanimity -- most people have said, "Yes, we want to do this."

And we have said, "We have to control this to keep effort from escalating." And they say, "Fine, but we still need the opportunity." The people in the east, their attitude is, "Look, everywhere is kind of fished so heavily that no one is going to buy a whole lot of pots and fish a whole lot more immediately."

They may buy up some allocation. They may begin to fish some of it, but they're not thinking of it as a threat to where they're fishing because it's so hard fought to get bottom and to hold it and to keep it from your competitors, and that has not -- frankly, we were surprised that we didn't get that comment, but we have not had it.

CHAIRMAN COLVIN: If I can add to that from kind of a practical "what-if" approach, Bruce, given the way things are, if people are going to fish for lobsters, the only thing that's going to keep effort from moving east now, anyway, is the cost of fuel and the availability of dockage.

If they're going to fish for lobsters, they've got to go east. On the other hand, in the category of "when it rains, it pours", we have another lobster health problem in the extreme Eastern Sound now spreading down into Block Island Sound that's becoming every bit as much of a concern to us as the problem in the Western Sound, so who can say what will happen.

It could be that a program like this would be a bust because nobody wants the gear, the tags. It could very well happen. Let me just stop where we are here in terms of comment, and ask Eric if that's his motion that's on the board and if he would, would you read it.

MR. SMITH: The motion is to approve the development of an emergency action by late summer to allow Connecticut to be able to regulate individual pot allocation transferability.

And even before asking for a second, Mr. Chairman, I guess I put in the words "by late summer" in acknowledgement of the normal amount of time that it takes for these things to go on, but I would have to say to you that the firm position of Connecticut is really "as quickly as possible."

It's that apparent. So if I may, I would change "by late summer" to "as soon as possible." The intent, we should all know from this debate, is that we're talking about this summer and not a longer timeframe.

CHAIRMAN COLVIN: Is there a second to the motion?

MR. AUGUSTINE: I'd like to second it for discussion purposes.

CHAIRMAN COLVIN: Seconded by Pat. I have most of the Board with their hands up, so I'll work my way around the room starting with Brian.

MR. BRIAN CULHANE: I don't like this. I don't like the position that it might end up putting New York in, but I do have some questions on this for Eric.

Eric, do you know what the maximum number of pots is that's held by any one license holder at this time, and is that where the 5,000 came from?

MR. SMITH: That's right.

MR. CULHANE: Because I wouldn't want to see anything that increases effort above what the highest number already is now. The second question was will it be one-for-one or is there some type of plan on retiring a number of these pots?

And then the other question I had concerns Area 6A. Is this proposal to allow trap tags that are currently allowed in Area 6A to go outside of Area 6A? And then the final one is LCMT approval.

CHAIRMAN COLVIN: Go ahead.

MR. SMITH: Okay, thank you. I believe I have all three of these, but I may have missed the first one in the other conversation. The one-for-one or retirement clause, we do not have that now.

What we did was the active participation so if a person actively fished 200 pots and he was allocated some number higher, he could only transfer the 200. Clearly, in the realm of advice from the Commission, we'll listen to all comers on points like that.

Regarding the 6A tags, the way we designed that system, the only limit in 6A is that a person fishing there cannot fish more than 1,000. If he was allocated more than 1,000, he can fish them out in Area 6.

It's a per-person cap in that area, but it's not a limit on a person who was allocated more. And for that reason, an Area 6A tag now can be used anywhere in Area 6. It's only the Area 6 tags that cannot be used in Area 6A.

I'll go over that quickly again, it's a little confusing. A tag that has a 6A on it, by our regulation can be used anywhere in Area 6. Yes, a tag that has a 6 on it can only be used in 6, not in 6A. And everybody's first thousand tags have 6A on them.

Anything you deserve more has a 6 on it and they cannot be used in that special management area. And the third point was the LCMT. Our LCMT has not met since this all came up.

The last thing they said, which was about six months ago now, was once all is said and done, the first thing they want to talk about is transferability, but they had no formal view at that time, which was about October.

Our Connecticut LCMT members obviously have come to our four hearings, and some of the New York guys have, too, and they've commented individually, but they have not met as a body. Were those the three questions, Brian, or was there a first one? Okay.

CHAIRMAN COLVIN: Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. Directly related to that, Eric, so that means that if a person has 12-1,500 pots, whatever that number is, when they sell one, they sell them all? Do they turn in their permit? Does their permit retire? Do they maintain their permit?

MR. SMITH: No, they could get rid of whatever number they want to. They don't have to get rid of all of them. But if they got rid of all pots, then they, themselves, would not be able to fish until they acquired some from someone else.

MR. AUGUSTINE: Oh, so their permit isn't retired?

MR. SMITH: No. It's just not active if you don't have any pots.

MR. AUGUSTINE: Just one point. It just seems to me a buy-out is a buy-out is a buy-out, and we'll call it a buy-out, if you will. If you sell them, you sell them and you're really not out of it other than you'll get some financial gain.

Correct me if I'm wrong. You get some financial gain for having got rid of the pots. It's very similar to the HMS buy-out on another group of people, but they get to keep their boats.

And even though they lose some of their permits in this particular case, if you're gaining from having had the permit and the pots and you're able to sell the pots, I just don't think it solves the problem because the problem can come back a year from them, two years from then, or three years from then.

In other words, it hasn't gone away. It sounds to me, as Bruce said, the effort could be transferred somewhere else, east or wherever else, but they still are permitted. And the bottom line is you don't have a net gain.

The pots are still fishable. The permit is still there. If the person had been allocated 1,000 pots, they can come back a year or two from then and buy another 1,000 pots. And I'm not sure there's really a saving here. If you'd respond to that I'd appreciate it.

MR. SMITH: Yes, I do. Unfortunately, I have a response but not a good answer. We debated that point. We posed that point very strongly at the public hearings and in our departmental review.

What came out of that process is how I described it. It did not have a retirement clause. It did not have even the statute that the legislature is looking at on licenses, it does not have a retirement clause.

The best it does is only the active ones, one-for-one, and that basically is not intended to reduce effort. And in fact, the Area 6 Plan was not intended to reduce effort.

What it's intended to do is keep it as it is, and we're trying to do that with pots as well. The active fish pots, if they go from an actively fished person here to a different one there, as far as we're concerned, that's a wash. And that's why we kept the latent or the inactive pots out of the mix.

CHAIRMAN COLVIN: Bruce.

MR. FREEMAN: It seems to me that this motion, if it does pass, should be to the whole area of 6. Again, I don't know what New York's position is, whether you favor this or not.

But if, in fact, we're going to go through this as an emergency and then New York at the next meeting decides, yes, they'd like to participate, do we need another motion to now include the other half of Area 6?

It would seem to me that this motion should address Area 6; and in that latitude, if New York wanted to participate, has that opportunity. It just seems like we're making this too restrictive.

Then the issue -- and Brian may have raised this and I just didn't hear the answer -- is the LCMT process. I mean, as I understand it, Connecticut had a public hearing for Connecticut fishermen, but LCMT 6, how has that been involved in this?

MR. SMITH: Well, we always send notices to New York fishermen, and most of them we welcome when they come to comment to us. And some of them are tough nuts and we welcome their comments, too.

They're tough on us. They all get notices. As I said to Brian, the 21 members have not sat down on this issue since it began to evolve. What we've done is the two public meetings, notice to all license holders, Connecticut, non-resident as well as resident, and then our two regulatory hearings back a couple of weeks ago.

So, everybody on the LCMT has heard about this, but they have not met as a body to discuss it.

MR. FREEMAN: Well, it just seems to me it may be -- again, I have no knowledge of what's going on in Long Island Sound on this issue -- that New York fishermen may be just waiting to see what transpires before they weigh in.

And their position may ---I don't know what it is -- they may agree; they may not agree; they may not care. It just seems that, again, I tend to agree with staff. When you look at the reasons for an emergency, you could certainly argue this as an economic emergency, but I don't know if our regulations cover such a thing.

It seems to be resource driven, and then the argument could be made, well, you're simply transferring tags from one group to another, nothing to do with the resource, it's strictly an economic issue.

And I just don't understand whether our emergency does apply. I would tend to agree it doesn't. It may be a short-sighted issue, but it creates problems for my vote on this. That's the only reason I raise it.

CHAIRMAN COLVIN: I have George Lapointe, Pat White, John Nelson, Bill and Pete Jensen.

MR. LAPOINTE: I'll make two comments. One was largely followed Bruce's on emergency so I'll skip over that. The other one is, it's been mentioned before, the issue of precedent.

Clearly, this will be precedential. Gordon has already said that if you guys get it, he'll get it. And it's an issue we will have to address and that troubles me a bit as well.

Actually, I have one other question and that is, what -- well, I also think it's important that some of the questions posed within the staff memo are answered before we advance with this proposal.

But you mentioned \$3 million not being enough. What kind of projections have you made about much money would be transferred with this sort of process?

MR. SMITH: We have not even begun to look at that. What we've tried to do is design a regulation that contains effort as much as possible. We don't know what the value of a pot would be.

We don't want to get involved in it, frankly. What we want people to do is say, all right, tell me how many I actively fished. I want to transfer 100 of those. I've worked it out with him.

And if we prove that those pots were in his actively fished column, they can go from one person to another. And that's the only part of the transfer we really care to be involved in, not wanting to be the right hand of the tax department or anything like that.

We'd rather not. So it's a good question, but I don't know the answer. I suspect there are going to be far fewer transfers than we all think there are because I think most people are going to stand pat and say, "I think I'll hold what I have."

But we want to provide the opportunity for people, particularly in Fairfield County, the farthest west county, who, by our documents, have lost 90 percent of their income in the last year.

If they want to get out and if somebody is crazy enough to want to buy them out, provide the opportunity that they had up until, you know, a few years ago before the license moratorium.

You could sell your boat, pots and your whole lock, stock and barrel and move on to a different type of income and somebody else would come in. And they're quite right. We have constrained that by our license moratorium on the pot limit. And we just are trying to find a way for them to exit without losing their shirt.

CHAIRMAN COLVIN: Pat White.

MR. WHITE: A continuation of that. You, in your original presentation, Eric, said that there was a 5,000 trap limit. And I thought you implied that there was a sunset to this. Wouldn't that be more appropriate to be in the motion, or was that no --

MR. SMITH: Actually, we have three basic conditions in the regulation. One of them is that it's within a year. The other one is active fishing only. And the third one is nobody can acquire more pots than 5,000.

I didn't put any of those in here. That regulation is already drafted in review, subject to approval of the Commission.

MR. WHITE: So this isn't a one-year transfer, this is a permanent transfer of that number of traps?

MR. SMITH: Yes, it's permanent transfer. It's not renting. It's one person buys what the other person has. And that can be done multiple times, but only up until June 1 of 2001; and then not superseded by another regulation, there is no more pot transferability.

Our Department felt, you know, ease the burden, ease the pain of the crisis, but don't let it go on forever unless

you give it a whole lot more thought and come up with a longer-range solution.

I feel kind of compelled to either ask Jack to explain what he was explaining to me here, or I'll try and give it my best shot because I obviously didn't understand something about the charter. Do you want to or shall I?

EXECUTIVE DIRECTOR DUNNIGAN: Well, it's nice to have the Vice-Chairman of the Federal Regional Fishery Management Council with us. But our procedure for emergencies is a little different.

We don't have to propose to do them at some point off in the future. We do them so this is an action the Board could take today if it wanted to rather than saying that we're going to prepare an emergency action for future decision.

The other thing is we've been looking at the rules. Emergency actions are good for 180 days and can be extended for two one-year periods after that if there's an FMP amendment under way.

So if you wanted something that would last you through until June of 2001, you either don't want to start your emergency until December of 2000, or you've got to have to plan on taking further action down the road.

MR. SMITH: If I may, Mr. Chairman, I wanted to be fair to the process and make sure that's cleared up. Whether or not it means a change in the motion, yet, I'm not quite certain.

I can read tea leaves like anyone else; this is a tough row to hoe. I can hear the comments. If I thought this was going to pass today I would say, take out "the development of" and simply say "move to approve emergency action" and then take out "as soon as possible."

I don't sense that. I could be wrong. My preference, then, would be for the Board to consider what I've said; and if they're not willing to vote for it today, then at least allow for us to answer any other questions that you might have between now and the next Board meeting to try and get it to happen then.

Then to go with the process, 180 days plus putting it into something like Amendment 4 on the list of those things might be an appropriate process solution to the question.

CHAIRMAN COLVIN: Well, if that's what you're suggesting, I don't find that inconsistent with the motion on the Board. You're free to offer to perfect your motion to make it more specific as to an expectation that there would be the final text of an emergency action for approval at the June meeting of the Board.

MR. SMITH: Then I think I will embrace that suggestion; motion to approve the development of an emergency action for approval of specific text at the June Commission meeting, and then to read as it continues to the end.

Well, right there, right before "as" at the June Commission meeting. Take out "as soon as possible." And up after "approve the development of language for an emergency action to be approved". All right? Yes, okay, "to be considered at the June Commission meeting". Thank you.

CHAIRMAN COLVIN: Is that perfection acceptable to the seconder?

MR. AUGUSTINE: Yes, Mr. Chairman.

CHAIRMAN COLVIN: Let me just say that it's going to be my intention, before we act on any motion of this nature, to ask the staff to just kind of run down the application of the charter to this proposal, so we'll get to that before we're done.

I still have lots of names on my list and it's now 6:00. John Nelson.

MR. NELSON: Thank you, Mr. Chairman. I'll make mine short. I appreciate, Eric, how you're trying to deal with this, but it just looks to me as if based on what we have as far as definition of "emergencies", that this does not apply.

It doesn't deal with the health of the resource. It is an economic one and I just don't think it fits under the emergency action.

CHAIRMAN COLVIN: Bill Adler.

MR. ADLER: A couple of things. First of all, I don't know if Connecticut has looked into the possibility of moving with the license transfer idea, which probably could be done in keeping with the plan and do it that way rather than this way, transferring the license.

I do understand that what we're talking about here is the traps only and going to an existing fisherman. But, if there is this much of an emergency, maybe making the entire business sellable might be that person that you're trying to help out might want to go that way.

The second thing was similar to John's, and that was that I didn't see that this was under the emergency wording, and if you approve this under the emergency wording, then how many more emergency exceptions are we going to make for emergency action, even though they don't qualify under the emergency rule?

I did hear you mention sunset provision, sort of. And I got lost in the thing of, yes, it's 180 days unless we do something. And the idea of a permanent sunset on this idea would probably be better, if it were to fly at all. And I'll stop there, Mr. Chairman. Thank you.

CHAIRMAN COLVIN: Pete Jensen.

MR. JENSEN: Well, most of my questions have been answered. I'm the same as Bill Adler. It isn't clear to me whether you intended to make this permanent or whether there was going to be an absolute cutoff date on it. I would be opposed to it if it was permanent.

CHAIRMAN COLVIN: Eric, do you want to address that question?

MR. SMITH: If I understand it, the one-year sunset, right now the only thing we can speak to is what the regulation will say for now. Come June 1, 2001, there would be no pot transferability unless some subsequent regulatory action was initiated and went through the hearing and the review process to put something else in place.

MR. JENSEN: You're speaking of the Connecticut regulation now?

MR. SMITH: Right.

MR. JENSEN: I'm speaking of what this Board would authorize --

MR. SMITH: I see.

MR. JENSEN: -- whether you would have the ability to do it again and again and again to make it permanent as opposed to dealing with the "emergency," short-term emergency.

MR. SMITH: Frankly, that would be very consistent with what our regulation says, if the intent of the motion was that the Commission would approve this for a period up to but not beyond June 1 of 2001.

I mean, that's no different than what we intend to have in our regulation. And perhaps at the end after transferability with "through but not beyond June 1, 2001."

MR. JENSEN: That would satisfy my concern.

CHAIRMAN COLVIN: Would you like that added, Eric?

MR. SMITH: Yes, please. After "transferability", "through but not beyond June 1, 2001".

CHAIRMAN COLVIN: Pat, is that acceptable?

MR. AUGUSTINE: Yes.

CHAIRMAN COLVIN: It is? Mark Gibson.

MR. GIBSON: Thank you, Mr. Chairman. I guess I'm not convinced that the Commission has interpreted their emergency action provision adequately. It seems to me an argument could be raised that transferring fishing mortality from an obviously weakened portion of the resource to a healthier one, perhaps on a west-east directional basis, would be beneficial to the stock.

It seems to me that if they don't have this provision, there will be a group of fishermen who have to make a decision either to stop fishing entirely or to try to scrape out a living from what remains.

And given that there have been arguments articulated that the western portion of Long Island Sound is a separate zone with immigration blocked by the larval retention and so on, that there could be irreparable damage done to the resource that's already weakened by disease if continued fishing by some desperate fishermen goes on on that area as opposed to transferring effort eastward.

So I'd like to know a little bit more about how the Commission evaluated the conservation benefit to this proposal as it relates to emergency action.

CHAIRMAN COLVIN: Are there any other questions or comments?

MR. GIBSON: Well, I mean, all we have here is the Commission determines that it doesn't meet emergency action. I'd like to know more about how that rationale was arrived at. Who evaluated that? Was it a

Technical Committee issue? What scientific basis was this evaluated under?

CHAIRMAN COLVIN: You're referring to Amy's --

MR. GIBSON: Yes.

CHAIRMAN COLVIN: I think that referred exclusively to the language of the charter itself. Correct?

MS. SCHICK: Correct.

CHAIRMAN COLVIN: It did not include a technical evaluation with respect to the issue but took at face value the representation that the proposal was offered with respect to economic impact and not with respect to conservation or coastal fishery resources, the attainment of fishery management objectives or public health.

I don't think it went any farther than that, Mark. I don't see any other hands up so at this point I'm going to ask the staff, to the extent they can, to evaluate the consistency of this motion with the charter provision for emergency action and the procedural requirements for the adoption of emergency actions. Jack is saying that we already did that.

EXECUTIVE DIRECTOR DUNNIGAN: Yes, I'm a little confused, Mr. Chairman. The provisions that govern emergencies are contained in Section 6.C.10 of the charter. Management Boards are authorized to take emergency action, to authorize or require any action that is not covered by the plan or to create an exception to any action that is required by the plan.

It must be approved by two-thirds of the entire membership of the Management Board. Within 30 days we have to hold four public hearings. The action can originally be effective for up to 180 days from the date that the Management Board takes the action, but may be renewed by the Management Board for two additional periods of up to one year, provided the Board has initiated action to prepare a Fishery Management Plan or amendment to address the issue, except that public health emergencies can be continued indefinitely for the scope of the public health problem.

And then there is a definition of emergencies which has been restated in the documentation the staff provided to you.

CHAIRMAN COLVIN: The question I would have, following up on that, is that I would presume, then, that should this motion carry and should an action be brought forward at the June meeting consistent with this motion, a two-thirds vote would be required at the time of the June Commission meeting to adopt the action but not necessarily with respect to the motion before us now.

EXECUTIVE DIRECTOR DUNNIGAN: I would think that's the correct interpretation.

CHAIRMAN COLVIN: The other question I have is with respect to the timing of the hearings. Are hearings required before or after an emergency action is implemented?

EXECUTIVE DIRECTOR DUNNIGAN: According to the charter, it's after the emergency action is implemented.

CHAIRMAN COLVIN: So hearings would need to be held following the June meeting in the event emergency action were adopted, a minimum of four public hearings at Commission?

EXECUTIVE DIRECTOR DUNNIGAN: I mean, I didn't mean to sound too, I guess, cheeky when I replied to Eric earlier. At the Commission we don't plan to have our emergency actions. When we have them we do them, so that's why.

CHAIRMAN COLVIN: And presumably the staff stands by the advice in its memo that notwithstanding the last three-quarters of an hour, this action does not appear to be consistent with the definition of "emergency" in the charter?

EXECUTIVE DIRECTOR DUNNIGAN: We do.

CHAIRMAN COLVIN: Thank you.

MR. NELSON: Call the question, Mr. Chairman.

CHAIRMAN COLVIN: Before we do, I want to just ask whether there is public comment that needs to come forward on this issue. Seeing none, is there objection to taking the question? Let us take about 15 seconds to caucus, please.

Are we ready to take the question? Will all in favor, please signify by raising their right hand; opposed, same sign; abstentions; null votes. The motion is defeated. Bruce Freeman.

MR. FREEMAN: I would like the record to reflect from our position we're sympathetic, Eric, to what you're trying to do. It's just our interpretation is we just don't have the authority to do that and we're involved in litigation now. I don't want to get involved in any more.

MR. SMITH: Mr. Chairman, the time is late. I do appreciate the time you've given to this issue. Thank you.

CHAIRMAN COLVIN: Thank you, Eric. Mark.

MR. GIBSON: I just had a question on what constitutes a "null" vote, to make sure we voted appropriately. When you lack unanimity in the delegation --

CHAIRMAN COLVIN: The majority carries.

MR. GIBSON: Okay, so we would have a "no" then.

CHAIRMAN COLVIN: You'd have a "no" vote. We'll correct the record to indicate one additional "no" vote.

The action of the Board addresses the motion's intent to pursue the transferability as an emergency action. That's off the table as far as the Board is concerned for the time being.

It doesn't mean that the issue can't continue to be addressed under other available implementation options, including the prospect of inclusion in Amendment 4.

I'd like to suggest, and I want to thank George for this suggestion, that perhaps between now and the time of the June meeting, that the Commission staff could be in contact with the Connecticut members of the Board to work on addressing the nine issues that are raised in the staff memo with respect to this.

And I will also say that it will be, under these circumstances, appropriate for New York to also be involved in those discussions, and to see whether a proposal for some other kind of consideration that addresses those questions may come forward at that time. That's probably as much business as we can do on this item today is my judgement, if that's satisfactory. And we will ask the staff to do that, then. Bill.

MR. ADLER: Very quickly, for Eric and Connecticut, go and look -- if you can, go and look at your license transfer plans that you've got going for yourself to see if maybe some of your problem could be addressed in that avenue, which you might be able to work it through so it doesn't conflict with the Lobster Plan from the ASMFC and yet addresses your problem.

So, you know what the plan says, you know what your thing is, just use that, look at that avenue and maybe there's a way through it there.

CHAIRMAN COLVIN: The next agenda item is a real brief one, I'm sure, an update on right whale issues. I understand the Vice-Chairman of the Committee of the Board has a report on this issue.

MR. LAPOINTE: I do, Mr. Chairman and I will try to be brief. I provided to the Board my e-mail as thesis. It was about five pages long. I apologize; well, no, I don't apologize for that because there's a bucket load of information there.

There are a number of people in this room who are Take-Reduction Team members. There are discussions going on about balancing whale conservation. All 280 of them left with the ongoing needs of the lobster fishery -- 290, it doesn't matter, Bill.

And I wanted to provide this to the Board for their information because it is something that could profoundly impact our Lobster Fishery outside of the actions this Board takes.

The other thing that I would like to mention is I've had some discussions with the National Marine Fisheries Service about how the Commission would be consulted as changes to federal regulations are proposed to protect whales, if that event occurs.

The Service will consult, I believe, with the Regional Fishery Management Council through a Section 7 consultation process -- I'm right on so far, Jack? Okay, well, then, I won't pay attention to the Executive Director -- because they are considered another federal agency.

There isn't a mechanism under the Endangered Species Act for consultation with something like the Interstate Commission because it wasn't thought that we would have or that we didn't have something like the Atlantic Coastal Act when the Marine Mammal Protection Act was last amended, I guess; or something like the Lobster Plan, wasn't thought through.

And I just want to raise that with people. And I have been in contact with NMFS and urged them, if this process moves forward, to consult with the Commission on proposed regulatory changes that could profoundly impact the federal part of our Interstate Plan.

CHAIRMAN COLVIN: Thank you. And I want to thank you, George, for keeping us on top of this issue and not letting it get away from us. Harry.

MR. MEARS: Thank you, Mr. Chairman. Just to clarify one of the statements which George indicated, by law we consult with ourselves, so when we promulgate federal regulations under the Atlantic Coastal Act, we must by law consult with ourselves. That's the way the law relates to the Atlantic Coastal Act and federal regulations.

MR. LAPOINTE: My comments were more substantive than legal. You can call it what you would like. You can consult with yourselves and talk to us and that would be fine.

CHAIRMAN COLVIN: Thank you. Item 12, update on recent public comment letters concerning Area 3. Let me see, I will try to keep this as brief as humanly possible.

Subsequent to the last Board meeting, we received some letters, and I had some communication with a Board member about an issue that involves the viewpoint and a concern from some fishermen about the Area 3 history-based approach.

I subsequently sent out a memo to the Board. You all received it. I want to emphasize that the primary purpose of that memo was to point out that we had some expressions of concern, that I felt it appropriate that they be addressed, and be addressed through the Area 3 process and not here at the Board table, as it were, and solicited support for managing the Area 3 process.

I'm very pleased to say that the Commonwealth of Massachusetts has once more stepped forward, and both Paul Diodati and Jim Fair have been very gracious to volunteer to assume a coordination role and a leadership role for carrying out and assuring that the Area 3 process is going to continue to be managed appropriately, and I very much appreciate that.

I've had occasion to talk to both Paul and Jim about it and I think it's going to be very helpful to us. My intention is that issues of this nature, when they come forward, that raise concerns that are relevant to an area be referred to the folks who are managing that area to work out, in consultation with the LCMT for the area.

And that's what we expect to be done here. And I'm sure Jim, working with the staff and working with the other state and federal parties who are involved in Area 3, will come up with an appropriate response to this issue.

That's as much as I had to report on it. I don't think we've included all the correspondence. It has generated quite a bit of correspondence and has been included in your packet.

But, if anybody wants it, just let Amy know and you're welcome to have it. Any other on this? Bill.

MR. ADLER: And Amy has both sides of the letters that came in. There were letters that I did read that were opposed to the idea, but there were also letters that came in in support and they'll be together. Thank you, good.

CHAIRMAN COLVIN: Yes.

MR. DAVID SPENCER: David Spencer, Area 3 LCMT. Certainly, the Area 3 LCMTs have no problem meeting again. That, to me, isn't an issue. I am a little concerned that in response to the letters that you got that supposedly were Area 3 fishermen, the majority were not Area 3 fishermen.

I think that's a fairly critical point to this issue. And in addition to that, you received five letters from Area 3 LCMTs, which I would hope would weigh very heavily. And just in my mind, in fairness, they should have received the same distribution that the other letters did. Thank you.

CHAIRMAN COLVIN: Okay, Bonnie.

MS. BONNIE SPINAZZOLA: Bonnie Spinazzola. I would echo what David said, and certainly we don't have a problem meeting again. I would just like to add one other concern to that.

Other than the fact that many were Area 1 people and not Area 3 people, a serious concern of mine is that many of the comments that came in now, when there was no public forum to request public process, many of those people did comment at the regular public hearings, and the Board at that time heard those comments, looked those comments over, considered those comments, and then went ahead and recommended the plan, so, obviously, for whatever reason they felt that it was a comprehensive view.

At this point I think that you could probably find letters or concerns for every single area. And I think to take comments when there is no process, I think that it's worthwhile to take them and to thank people for their comments, but I just found that it was difficult to act upon them when there was no forum and when those comments had already been considered. Thank you.

CHAIRMAN COLVIN: Yes.

MR. STEVE SMITH: Steve Smith, Outer Cape Lobsterman's Association. I would like to reiterate what Bonnie and David just said. We ran into the same problem in the original EMT process before the New England Council.

We held over 30 meetings, bent over backward to make sure everybody was notified of the meeting. When the whole plan was finally presented, two or three guys show up at the Council meeting and make complaints about it and then we're put up before everyone and asked, "Well, why weren't these guys participating and what's the problem?"

I think when you get into this process where you have EMTs, and you call them LCMTs right now, you have to assume the credibility of all those that are participating, that they're making the best effort to get everybody there.

So to take comment after the comment period has been over with, after all the work has been done, seems a little bit out of order. I'd just like to agree with them on that.

MR. ROY CAMPONELLI: Roy Camponelli, also an EMT and LCMT member. I worked through both processes and, once again, I look forward to the opportunity to discuss it with whatever fisherman would like to show up at whatever time and whatever place.

I would also like to mention that I believe that some of this opposition to the LCMT Area 3 proposal has probably been brought about by the National Marine Fisheries Service's final rule, which doesn't go along with what the LCMT Area 3s have proposed.

CHAIRMAN COLVIN: Thank you. Anyone else? Board? We'll move on to Item 13.

MR. SMITH: Mr. Chairman, are you asking for other business?

CHAIRMAN COLVIN: No. We have completed Agenda item 12. I am reminded that a motion made earlier was tabled until the conclusion of Item 12. That motion is now in order. Without objection, that motion is on the floor for consideration. Is there further discussion on the motion?

MR. AUGUSTINE: Call the question.

CHAIRMAN COLVIN: Seeing none, are you ready for the question? Take about 30 seconds to caucus, please. I'm going to ask the maker of the motion to read it again into the record before we vote.

MR. AUGUSTINE: Thank you, Mr. Chairman. Move that the Lobster Management Board add for consideration in Amendment 4 a measure to allow conservation equivalency for v-notching by gauge increases.

CHAIRMAN COLVIN: Will all in favor, please signify by raising your right hand; opposed, same sign; abstentions; null votes. The motion carries. Pete.

MR. JENSEN: I'm a little confused, sometimes easily so. It isn't clear to me at this point what things are going to be in Amendment 4, what things are going to be in the proposal for rule changes, and then is NMFS going to have to do a second proposed rule once we do Amendment 4?

It would be helpful if somebody had a schematic of that, perhaps, because I'm certainly confused.

MR. LAPOINTE: It would be a miracle if somebody could draw a schematic of that.

CHAIRMAN COLVIN: Jack.

EXECUTIVE DIRECTOR DUNNIGAN: I think if anybody could, we'd immediately refer them for therapy. As of right now, Addendum 2 is going to deal with fishing mortality rate reductions.

Amendment 4 is going to deal with conservation equivalency for 100/500 and v-notching. Addendum 2 is the priority. If you want to change any of that, right now is the time for the Board to do that.

CHAIRMAN COLVIN: Pete.

MR. JENSEN: Harry, would you mind repeating the things that you anticipate are going to be in the proposed regulatory amendments from NMFS?

MR. MEARS: The issues which have been recommended from the Commission will be identified and addressed accordingly in the forthcoming environmental impact statement.

Essentially, it's called a supplemental environmental impact statement. If I remember them all, I do know they include the request for gauge size, historical participation in Areas 3, 4 and 5, recognition of conservation equivalency for New Hampshire trap limits as they pertain to federal permit holders in the state of New Hampshire state waters -- help me out, it's getting late
-- the black sea bass issue; the closed areas, the closed fishing areas in Area 4.

CHAIRMAN COLVIN: And vessel upgrades in Area 3?

MR. MEARS: That's also included in the previous recommendations, yes.

CHAIRMAN COLVIN: I think there's also a maximum size limit in Area 4. No, that's not in it? No. That's as good an answer as you're going to get right now, Pete.

MR. JENSEN: Okay, I appreciate it. That helps.

CHAIRMAN COLVIN: All right. If there's no further action, we have Agenda item 13 yet. Eric.

MR. SMITH: Other business. Actually, a very quick question, if I may. You can appreciate the feelings, the sense about the transferability issue back home, and I need to bring back an answer to a question, and I don't have a problem with how anybody voted.

I do have a question, and a quick head nod would help me out. Was the defining issue the inability to see the emergency action definition as a way to resolve this problem or was it because the Connecticut regulation, as I described it, didn't have sufficient conservation value in there to satisfy the potential for the effort increase? I mean, that would be helpful for me to take back.

MR. NELSON: A.

MR. SMITH: Mostly A. Okay, thank you, Mr. Chairman.

CHAIRMAN COLVIN: Jim.

MR. FAIR: We still really haven't resolved the issue of timing on the amendment ----

CHAIRMAN COLVIN: We have not.

MR. FAIR: -- and at the risk of sounding like a broken record, I think there are -- at least the two measures that are there right now could be done by the states pretty much without a lot of staff input.

I mean, at least the amendment itself could be about two pages. Obviously, if other things are added to that, that doesn't work. But, we really need to resolve it, one way or the other. If we can't do it, we can't; but if there is a way that that process can be expedited, we'd like to pursue that.

CHAIRMAN COLVIN: I think what I'd like to do is I would like to take the first other business item which is the three-year planning layout that is on paper, and it's part of the handouts, to help us see what the staff have developed in terms of an overall plan.

And I guess I should say by way of preamble that this is done with some expectation of what the budget can support as well staff time, so if everybody would take a look at this, I'm going to ask Amy to walk us through it.

MS. SCHICK: It's a planning calendar, a three-year planning calendar by quarters starting in 2000, going through 2002.

I'll just start in the spring of 2000. We're having this meeting in May. The peer review of the stock assessment will be conducted. In June the stock assessment and peer review will be presented to the Management Board.

And the Advisory Panel will also meet to review the stock assessment results. In the summer the Technical Committee will meet to review the Peer Review report and recommendations from the Board.

The PRT or Technical Committee will review the peer review results and prepare recommendations to the Board on the management implications and options to the Management Board on how to proceed with Addendum 2.

In August the Board will review the PRT recommendations and proceed with Addendum 2, if necessary. In the fall the Technical Committee and the states would work with the LCMTs to develop the appropriate recommendations to the Management Board, if necessary.

And the Technical Committee would have to evaluate the LCMT proposals. Moving into the winter of 2001, the Board would have to decide which items to include in Addendum 2 to take out to public hearing.

The PRT would prepare the draft addendum. And then the Board would have to approve Addendum 2 for public hearing. There would be hearings held in the spring of 2001 on Addendum 2.

The Board would review comments in June and approve Addendum 2 in August of 2001. That is the sequence of the addendum process for Addendum 2 with possible implementation in the fall of 2001, having implementation plans and implementing for fishing year 2002.

That time line doesn't have any sort of planning for Amendment 4. This is only for Addendum 2.

CHAIRMAN COLVIN: And I want to just emphasize the process that we're looking ahead over the next few months and what we have conceptually outlined for getting to Addendum 2.

I just want to make sure everybody's on board with that concept that we're going to be doing the Peer Review in May and then have a full presentation of the stock assessment itself and the results of the peer review at our meeting in June.

And we will begin, hopefully at that point, to have some clear understanding of what the results of the assessment update are and what the peer reviewers have concluded with respect to those results.

We'll also have an Advisory Panel meeting to present the same information to our advisors. The expectation at that point is to then get the Technical Committee and the PRT to begin to translate the results of the stock assessment and peer review into what it means for implementation of Amendment 3 in each of the

management areas.

How does it change our -- what does it mean with respect to what our reference points are? What does it mean with respect to the stock status as compared to the reference point for each area?

What are the likely ramifications in terms of additional management actions? We need to have that kind of advice before we reconvene with the LCMTs to reassess what needs to be done and to make any changes that may be necessary to the recommendations they made previously.

That's how we've laid it out. We've laid out the last part of that process for the fall and winter, recognizing that most of the LCMT members, the kind of feedback we've had is that's the time of year when they're most able to spend time in concentrated work.

Any questions about that part of the process just in terms of kind of getting from here to there on Addendum 2? Any concerns about it? Harry.

MR. MEARS: One of the concerns I have, I think, can be termed logistical in terms of the number of Board meetings which may be planned between now and the remainder of this calendar year and as we move toward completion of the hearing draft for Addendum 2 in the year 2001.

I might suggest that there be some attention focused on what the next step could well be after the completion of the external peer review of the stock assessment. And I'm thinking that perhaps one of those steps could very well be the need to establish a communication between the Board and the Technical Committee in terms of requesting terms of reference that would be applicable or appropriate for information the Board would need as we begin to work on Addendum 2.

So, again, the concern that I have that I believe merits some discussion would be the number of Board meetings during this next eight-month period or so and also ways to streamline the exchange of communications between the Board and Technical Committee concerning the pertinent information that needs to be made available as we begin to draft Addendum 2.

CHAIRMAN COLVIN: Well, I'm not sure this is going to be responsive to your question, Harry, but starting with the bottom line, we have \$12,500 to operate with over the current ASMFC fiscal year.

We've got a commitment to an Advisory Panel meeting in the spring, a Technical Committee meeting in the summer, additional Technical Committee operations in the fall. Those will occur outside ASMFC weeks and will be paid out of the Board budget.

So I would have to say that that's what we're going to be able to pay for is what it shows here. If the Board is going to meet, it's going to have to meet in ASMFC weeks. We probably will have a meeting in each of the ASMFC weeks this year is my guess.

I think you can kind of see how that fits along the path here. But that means we'll be meeting in June, in August, in October, and that's it for the year. So we'll have to get whatever communication and coordination and consultation and et cetera done during those meetings.

And I think that it's also fair to say that for the balance of the fiscal year, what is shows here is all we have

money for so we don't have money for anything else, public hearings, additional meetings of any advisory bodies other than the ones that are shown here. Pat.

MR. AUGUSTINE: Thank you, Mr. Chairman. That having been said, what can be done by the Board and/or staff to at least start developing the skeleton of Amendment 4? I understand where we're coming from with this.

We have no funds for additional meetings, but we've decided to take some action. Harry indicated the four, five or six major items that the National Marine Fisheries Service is going to be addressing.

Are we going to do nothing between now and then or between now and the year 2001? Just a clue as to what may happen between now and then on Amendment 4, if anything.

CHAIRMAN COLVIN: Who are you asking that question of?

MR. AUGUSTINE: Well, I guess I'll ask it of Amy and/or the staff, which would be Dieter.

CHAIRMAN COLVIN: Well, I have to tell you in fairness, from my perspective the work that is here, that's written down on this page is what staff thinks it can accomplish. If the staff thought it could move any more mountains than this, they'd have put them in here.

So I don't think it's fair to ask the staff how much more can you shove in. I don't think it's a fair question. I mean, if the Board wants to direct the staff to do more, that's within the Board's purview. But don't ask them to put the gun up to their head anymore. John.

MR. NELSON: That probably expresses it better than I could, Mr. Chairman. My sense is that obviously there's a lot of work that needs to be done. There's a lot of issues that need to be addressed under Addendum 2.

And we obviously have to address those. I would say that for Jim, and perhaps Rhode Island, that what they need to do is start putting together a plan on how they would look at developing Amendment 4 with whatever guidance could be given by the Commission and submit that for us to review at the June meeting, the plan on how they would do that, not the -- if you got the amendment done, that would be amazing.

But if they could submit a plan that we could look at and see how they would go about that for the June meeting, I think that would be appropriate.

CHAIRMAN COLVIN: Essentially, a proposal that the states might come forward with as to how they could contribute resources to the development of an Amendment 4 that addresses those issues the Board has so far approved for inclusion in Amendment 4, which are two.

MR. NELSON: That's correct.

CHAIRMAN COLVIN: That is a reasonable suggestion and I thank John for it. How do folks feel about that? Mark.

MR. GIBSON: He got his hand up before I did. I was going to suggest that those states that have the most

interest in Amendment 4 consult with one another and see what sort of resource pool they could bring together to get this started, perhaps on a parallel track while Addendum 2 is going on as well.

So, we're interested in doing that and would work in whatever venue we could to do that.

CHAIRMAN COLVIN: Jim.

MR. FAIR: I'd like to make it a little stronger than that. I'd like to make a motion that the Board make Amendment 4, as it is presently constituted, a priority item with the understanding that the states will undertake any necessary staff support.

CHAIRMAN COLVIN: We'll need that up on the screen. I'll ask for a second in a minute. I want to see it up there. I think it would be appropriate in the context of this motion that the state be identified. I think it's the states of Massachusetts --

MR. FAIR: The states of Massachusetts and Rhode Island.

CHAIRMAN COLVIN: Is there a second to the motion? I should ask first, Jim, is that your motion, what's up there?

MR. FAIR: Yes.

CHAIRMAN COLVIN: Is there a second? Mark Gibson seconds the motion. I want to just emphasize going in that there is a process that the Commission employs in the development of Fishery Management Plan amendments.

And the Board should not construe any reference to -- however the motion is undertaken, to mean that we would in any way follow a process different from that which is ordinarily employed and is laid out in the charter.

There is a role for Commission staff. That role would have to be undertaken to some degree. There are requirements for public comment and hearings and so forth. Just so that everybody understands and it's on the record, the process would need to be followed.

And I don't think we need to iterate the process. It's laid out in the charter. I think probably the first step would be to establish a PDT.

The PDT would be comprised of Commission staff as Chair and, consistent with this motion, staff representatives from Massachusetts and Rhode Island would be assigned the majority of the writing work. And I think that's how the process would be initiated. Dieter.

MR. BUSCH: Mr. Chairman, I'm a little concerned about how this would operate parallel to our existing lobster management or -- I would be more comfortable if they were investigating issues and funding options to be considered under this amendment.

This almost sounds like it would be a parallel activity where the normal process would be working on Addendum 2, and then we have this new activity working on Amendment 4 but there are no limits identified

to it.

Some states identified that they wanted to have other things considered, so I'm not quite sure exactly how this would function. Thank you.

CHAIRMAN COLVIN: I understand what you're saying, Dieter, and I think -- let me state again for the record what I believe the intent is so that it's reflected in our record.

I believe the intent of the motion, the language in the motion that says, "Amendment 4 as currently constituted" is intended to refer specifically to the two conservation equivalency issues: one, the allowance for conservation equivalency in lieu of 100/500 non-trap and the conservation equivalency in lieu of v-notch.

And I believe it is also the intent of the motion, where it says "make Amendment 4 a priority item", that it would, indeed, be in development and the process that I spoke of would be going on at least during some of the same timeframe as the development of Addendum 2 would be going on.

I believe that that's consistent. And I'll look at Jim, but I believe what I just said is consistent with the intent of the motion. Is it not, Jim?

MR. FAIR: Yes.

CHAIRMAN COLVIN: Yes. Okay, John Nelson.

MR. NELSON: Thank you, Mr. Chairman. I understand what Jim wants and I'm not sure, though, that what we have already undertaken might satisfy a judge and, therefore, doesn't need to have the so-called "priority."

I'm not sure what "priority" means. We have this three-year planning on what is our priorities. And we have also a tremendous number of other plans that are prioritized.

I'm still much more comfortable that the states come back in June with a plan so that we can see how they're going to be able to mesh with the ASMFC process, and we can have that laid out for us and then we can decide whether it's a priority or is there another word that better defines it.

I'm uncomfortable with using a priority at this stage because the Commission already has its priorities laid out. So, Jim, if you could, I'd be happier with just bringing something in in June.

You've already got an initial something to show to the other litigants and the judge that you're making headway and that you have a step two that you're involved in. And I would think that would suffice to show that there's progress being made here.

CHAIRMAN COLVIN: George.

MR. LAPOINTE: I won't reiterate my earlier comments, although my concerns still stand. One thing I will say is that as we make this a priority item, your comments, Mr. Chairman, about the normal ASMFC process we will have to pay attention to; and that is, I mean, we'll have to use our advisors.

And when we bring the public information document out to hearing and the amendment itself, the v-notch

issue may be important in Massachusetts, but it ain't just a Massachusetts issue, so there's going to have to be a full public hearing process as we normally have in our amendments if we carry forward with this.

CHAIRMAN COLVIN: There will need to be public hearings, that's for sure. There will also need to be some form of input by the Technical Committee. But as I said, we are not going to be able to have additional Technical Committee meetings or AP meetings, so whatever schedule we're on during the current fiscal year at least will have to dovetail with the established meeting dates.

I will also say this. And I don't want to do this too often, but I think from the perspective of the Chair, this is one issue that I would probably insist on, and that is that we have a schedule that's laid out here, that's laid out consistent with the money that we have available, the resources that we have, to get Addendum 2 done.

And I do not think that that schedule should be pushed around to accommodate things that have come along later. I think if things that have come along later can fit into this schedule, if we can plug some consideration that needs to happen for Amendment 4 into a Technical Committee meeting that's on this schedule, that's fine.

But I don't think it should be the other way around. And I'd be inclined to be fairly hardnosed about that. Pat.

MR. WHITE: Well, that was the point I was going to make and you've made it a lot better, Mr. Chairman, because with the priority thing really confuses me. But the other part, as I understand in this, then no other issues would be able to be addressed in Amendment 4, only those that are currently on the table? This is quite restrictive.

CHAIRMAN COLVIN: I would put it this way: that pursuant to this motion, there would be two issues incorporated in Amendment 4. Jack.

EXECUTIVE DIRECTOR DUNNIGAN: Were you going to finish the sentence?

CHAIRMAN COLVIN: What I'm saying is that if this motion passes, there are two issues in Amendment 4. I am not going to sit here and predict what this Board's going to do at its next meeting.

EXECUTIVE DIRECTOR DUNNIGAN: Exactly. And when the public information document, whatever comes forward, if the Board decides to add something else to it, that'll be the decision the Board makes at that time.

We will follow our process. That's all we've ever committed to doing. These are no final decisions here today. It's a commitment to beginning down the road. With respect to John Nelson's comment, nothing we're doing today is going to any federal judge.

This is strictly between the party. It's a question among ourselves as to whether we're satisfied that the action that the Board has committed to is sufficient to not continue to pursue the lawsuit.

To be honest with you, that's not my call. But we're not doing this to impress a federal judge. This is among ourselves.

MR. NELSON: And the other litigants.

CHAIRMAN COLVIN: Any other comments from the Board? Is there public comment on the issue?

MR. PIKE: Thank you, Mr. Chairman. Again, my name is Jeff Pike on behalf of the other party. First, I want to thank you for the time you've devoted to this issue. This issue in regards to Addendum 2, I think you said came along later, but, in fact, we've been dealing with this issue for many years in litigation.

We appreciate the fiscal constraints you have. It has cost us a lot and will cost you and us a lot to continue this litigation. We'd like to work it through the process. We need to make a decision today.

We do, the Association, on whether or not the commitment of the Board and the Commission is sufficient enough for our lawyers to advise us to basically sit on our hands. Looking at the three-year schedule, I didn't see Amendment 4 on here.

I think it's quite helpful that the states of Massachusetts and Rhode Island have offered to do the bulk of the work. If this amendment is expanded, then I would presume other states would have to be involved or, I don't know, maybe the offer of the Commonwealth and Rhode Island might be withdrawn.

We think the two issues are very closely aligned in terms of changing mandatory provisions to optional provisions, that this could be done rather quickly. It would be nice to see an Amendment go through the process that actually is in a timely manner.

And we would hope that the Board would vote favorably for this motion. Thank you.

CHAIRMAN COLVIN: Thank you. Any other comments? The Board ready for the question? All in favor, please signify by raising your right hand; opposed, same sign; abstentions; null votes. The motion carries.

We have two more items of other business, but before we walk away from this one, I want to say it again, that I believe that the Board's action just now constitutes the first step down a path that probably requires us to convene a PDT in the very near future, so I wanted to ask the commonwealth of Massachusetts and the state of Rhode Island to identify representatives to a PDT, again, with the understanding consistent with the spirit of the motion that those representatives will work with staff but will do the lion's share of the drafting work.

MR. GIBSON: Want a name?

CHAIRMAN COLVIN: Sure.

MR. GIBSON: It'll be Tom Angell.

CHAIRMAN COLVIN: Lucky Tom. Okay, just if you'd make that known to Amy.

The next item is there is a letter that we have received, and I think it's the very last item in the packet that came with the meeting that references tag transferability, co-signed by Atlantic Offshore, the Rhode Island Lobsterman's Association, Mass. Lobsterman's Association, and Outer Cape.

Amy, can you give us kind of a precis of the issue here and suggest to us a course of action.

MS. SCHICK: The issue deals with transferability. And when we went forward with Addendum 1 and a trap tag system, one of the biggest concerns of industry was being able to rotate and maintain their gear with non-transferrable trap tags.

The Law Enforcement Committee strongly encouraged non-transferability of trap tags among traps because of enforcement issues related to it. And the Law Enforcement Committee committed to working with industry on mechanisms of allowing fishermen to continue maintaining their traps and their rotation of gear within the trap tag system.

Industry has come forward and put a lot of time into looking into ways that industry can maintain their gear and rotate their gear within the trap tag system. And this letter came from the Lobsterman's Association, identifying a proposal as to how gear can be maintained.

However, there are problems with the federal regulations in allowing them to implement this system. What they're proposing is that fishermen would be allowed to purchase several sets of tags.

The first set would be their main set of tags that they would be operating under with the 10 percent provision to rotate their gear. They would also like to be able to purchase an entire set of replacement tags for any catastrophic loss, so if something happened there would be a set of catastrophic loss tags at their state agency that they could go and pick up and immediately be able to use. And also to have a third set of tags that would allow them to rotate their gear.

Under the federal regulations, the regulation is written that fishermen may only purchase their trap limit plus 10 percent which would prohibit them from purchasing additional sets of tags.

Under the proposal, the additional sets of tags that they purchase would be held in trust by the state agency so they would only have one set of tags at a time, and they would have to go into the agency to receive their replacement tags or their rotational tags.

But under federal regulations, anyone who has a federal permit would not be able to rotate their gear under this system.

CHAIRMAN COLVIN: Bonnie, do you want take a shot at --

MS. SPINAZZOLA: Yes, I would like to just clarify. I don't know that necessarily we're looking for three individual sets of tags. I think it would be up to the individual fishermen.

When we had a meeting in New Hampshire last summer, I think it was, with law enforcement and industry, we talked about transferability. We understood that Law Enforcement really had a hard time with that and would have a terrible problem trying to enforce the trap tag system that way.

And we sat and we agreed to perhaps a policy where the fishermen could have an exchange program and perhaps, because there weren't tags available, or if they didn't want to leave their traps sitting without tags, they could go to an enforcement agent and say, "I'm going to rotate 50 traps. Can I have 50 tags and I will give you back 50 tags?"

That was something that we talked about that was a good possibility. Since that time it has not panned out, and basically what's happening with this cohesive trap tag system is that each state is -- it's very incohesive --

each state is really doing their own thing.

What we're recommending is since the NMFS program came out, what they have said is even worse as far as gear rotation is concerned. They're saying that if someone wants to rotate gear, they have to cut their tags off.

Then they have to send those broken tags to the distributor, then the distributor has to send the tags back so that the fishermen can then put them back on their traps before those traps can be fished.

Obviously, that leaves the gear out of the water for quite a while. What the fishermen are recommending, or what all four of our agencies are supporting, is that perhaps in the language where it says the fishermen can only "purchase" one set of tags, what we're recommending is that it say "possess" one set of tags.

If a fisherman wants to buy more sets of tags, then that would be up to them. The agency would hold it in trust or keep it at the agency so, therefore, if you wanted to transfer 100 traps, you could go to your agency.

You'd cut off your tags. You'd bring them back to the agency and say, "Can I have 100 of my tags?" That way it would just cut off the lag time. It would cost the fisherman more to buy two sets of tags or whatever, but it would save them a great deal of money in the time that their traps are not fished, and that's the history behind that.

CHAIRMAN COLVIN: Thank you, Bonnie. George.

MR. LAPOINTE: Joe, has the Law Enforcement Committee or a select number of you looked at this proposal?

COL. JOE FESSENDEN: Well, we certainly talked about it last summer. Bonnie is correct. In the state of Maine now we're operating under similar provisions. And I would like to think that we could get together with industry and come to some agreement with industry and make a recommendation to the Board at some future time, but this isn't that far off from what we're doing in Maine now.

CHAIRMAN COLVIN: Bill.

MR. ADLER: I think what I'm also hearing here, however, is something that is saying, "Please, National Marine Fisheries Service, change a word or two that you now have that wouldn't permit this to be done."

I think that's what I'm hearing here. Now I don't know whether the Board, if the Board agrees, to maybe ask NMFS to do it or whatever, to see if they could adjust that word so something like this could be developed, because right now in the federal world, that's illegal because of a word that was in this letter so I think that's what I'm listening to.

CHAIRMAN COLVIN: John.

MR. NELSON: I was trying to get some agreement here with my federal counterpart, and maybe I'll just speak for him.

CHAIRMAN COLVIN: Good idea.

MR. NELSON: Well, the point is that I think most of the states are operating under that plan on allowing

bringing in tags and getting replacement tags associated with it for rotation.

But if people want to buy extra tags and it's held, perhaps not at the agency but at the vendor, and then somebody comes in and has 100 tags that they want to do through rotation, it's only going to take a day or maybe two days at the most for the vendor to have received the word to issue 100 tags that are already prepurchased and get them to the applicant, so that should be a reasonable compromise if the agency doesn't want to hold on to the tags themselves.

And so what we could ask the agency to do is merely, when they go to their proposed rule put in the "possess" versus the "purchase." And if Harry could get that implemented, I suspect that will solve the problem.

CHAIRMAN COLVIN: I would note that earlier we agreed to have staff frame a letter to the Service that summed up comments on a variety of issues. If it is the Board's desire, we could certainly include this among the issues in that letter. Harry.

MR. MEARS: Certainly, that would be the prerogative of the Board, and if that's the sense of the direction where the Board agrees to go with this issue, that would be my recommendation.

I would like to reference that at the current time we do have agreements with the states of Maine, with Massachusetts, with New Hampshire and Connecticut where the tag replacement policy is indicated that it will be conducted in such a way that it's in compliance with both state and federal regulations.

And certainly Amy was correct, that at the current time, as the regulations are written, it is not possible to buy in advance a double set of tags regardless of whether they're held at a third party location.

So, if that's indeed the type of recommendation this Board would like to make, then, yes, that should be submitted for appropriate consideration in the next proposed rule.

At the same time, I think what I heard the Maine representative indicating was that perhaps an alternate method to ensure timely replenishment of lost tags was being evaluated.

I would just like to ask in greater detail, Joe, what this alternate mechanism -- is it one that has been in place for a number of years that has served the need that we're discussing here, or is it a new way of addressing the issue?

COL. FESSENDEN: No, our program has been in effect since '95. And what we've been doing is buying replacement tags, I believe 5,000 at a time. And they have serial numbers on them. And we will exchange those tags tag-for-tag with fishermen.

So if they're rotating gear, they come in with 100 tags, we replace them at cost tag-for-tag. And it's worked very well for us. And it actually solved a lot of issues we had with transferability in Maine.

And we issued three million tags last year in the state and really had very little problems with rotation of gear. We've got 7,000 fishermen and they fish just as hard as fishermen from other states, and they really were able to deal within that system. And I don't see any reason why other fishermen can't do the same.

CHAIRMAN COLVIN: What's the pleasure of the Board? Would you like to see this issue addressed in the

letter to the Service?

If there is no objection, then, I would propose that we do as we did with the other issues and incorporate the suggestion for the change to the federal reg in the draft letter that will be developed and that will be e-mailed to all of you and that you will have an opportunity to comment on before it goes out. Without objection we'll handle it that way. Thank you.

The last issue on the agenda relates to regulatory changes in the state of Rhode Island.

MR. GIBSON: Just to give you an idea as to why we're so hot to trot for Amendment 4, last Tuesday night our Marine Fisheries Council eliminated the 100/500 provision in our regulations.

I don't know whether that has been filed yet. If it hasn't, it will be filed shortly and will take effect 20 days later. Essentially, it will rescind that provision that we had put in place to be compliant with Amendment 3.

Our Marine Fisheries Council was well aware and advised that that was a compliance regulation, a compliance requirement. They were also well aware that we had embarked on, within the process here, an attempt to get the plan amended, that we had received support both at the Management Board and the Policy Board to do that.

But they felt that they were answering to a higher authority, and that is that since we have put that regulation into effect, we have had a lot of complaints from the mobile gear sector, feeling that they were being discriminated against on the basis of having a daily possession limit imposed on them when the majority sector of the industry did not have a daily possession limit.

There was a violation which in turn was prosecuted and went to court and the violation was dismissed. There was sufficient latitude for interpretation of the judge's decision that our Marine Fisheries Council felt that there was a very real possibility that if there was another violation and it went before the same judge, that he would find that people's civil rights within the state had been violated.

That would be a very serious outcome which would have very serious implications to the Agency as well as people within the Agency. And the Marine Fisheries saw fit to eliminate the regulation and, in their view, protect the citizen's rights within their state.

So that's where we are, where that regulation will shortly disappear from our books.

CHAIRMAN COLVIN: Mark, is that irreversible at this point? Let me rephrase the question. Based on the action of your Council, you're compelled to file the rule change and that will happen.

MR. GIBSON: Yes. I'm fairly certain that it's going to be filed and going to take place. They certainly can reconsider. If I were to come back from one of these Board meetings with a finding of non-compliance and they were faced with some time certain of making another decision in terms of risk to the overall industry versus risk to aggrieved fishermen, they might be forced to reconsider their action.

They have the opportunity to do that. I can't predict what they might do. They could reinstate that at any time with the proper public hearing process and waiting period.

CHAIRMAN COLVIN: Thank you. Amy, I just want to review for the record my understanding that the rule in question is a compliance item, and that in the absence of it, there is an issue with respect to compliance that this Board needs to consider at this time?

MS. SCHICK: That's correct.

CHAIRMAN COLVIN: Thank you. Questions or comments? Pat.

MR. WHITE: A question, if I could. Was there any discussion at that meeting about deregulating the amount of groundfish on lobster boats or was this strictly the other way around?

MR. GIBSON: I guess I'm not understanding the question.

MR. WHITE: Well, currently, there's a restriction on the amount of lobsters a mobile gear fishermen can have and the amount of groundfish that a lobsterman can have.

MR. GIBSON: Yes.

MR. WHITE: And you're doing away with one regulation. Are you doing away with the other?

MR. GIBSON: No, there were not other regulations addressed that night, just this one.

MR. GERALD CARVALHO: Mr. Chairman.

CHAIRMAN COLVIN: Yes.

MR. CARVALHO: In addressing that question, the state of Rhode Island doesn't have restrictions on user groups, one species versus another.

If we have a possession limit, the possession limit applies the same to all license holders. So our lobster fishermen take groundfish or take whatever fish is allowed by anyone else in the fishery.

The same possession limit applies to all license holders. Now the exception being, of course, the federal restrictions. But under the state regulations and state restrictions, all license holders are treated the same.

CHAIRMAN COLVIN: John.

MR. NELSON: Mr. Chairman, maybe I missed your point. Did you feel we had a compliance issue we needed to deal with now, or are you anticipating that if Rhode Island actually does do away with this regulation, that then they would be found in non-compliance?

CHAIRMAN COLVIN: Well, I certainly would stand to be corrected, but it was my understanding, and this was the basis of my question, that once the Council acted, the Rhode Island state government had no discretion but to file the rule change consistent with the Council's action.

In other words, it was the Council's action that -- basically we're in a ministerial implementation of the decision that was made. And that being the case, arguably we are already in a non-compliance situation subject only, and I think this is what Mark's answer was, only to some change or retraction of the action by the

Council.

MR. NELSON: So, in that light, Mr. Chairman, and since they actually have not passed that action, I would suggest that we send a letter to the Council in Rhode Island, and point out that this particular item is still a compliance item under Amendment 3; and that until it is adjusted, if it's adjusted, that they do need to be in compliance with that; otherwise, we would be forced to go through the non-compliance process -- notice, notice.

MR. ADLER: I make that in the form of a motion if you didn't.

CHAIRMAN COLVIN: I recognized George, Bill.

MR. LAPOINTE: We took an action as a Commission this morning with the state of Virginia in advance of their making their regulation effective in terms of compliance.

If we, in fact, want to send a strong message, we can use similar language. The difficulty is that we know in Virginia it's going to go into effect on May whatever. With this we would have to reference the day upon which

it's filed or it becomes effective after filing.

CHAIRMAN COLVIN: Mark, can you give us a little tighter estimate on when the rule is going to get filed?

MR. GIBSON: It's hard for me to do that because the person who does our filing was out sick today, so I couldn't check with him before I left. If it has been filed, generally filings are done within several days after the Council action, which would have been some time later last week or towards the beginning of this week.

At that point there is a 20-day waiting period before they become effective.

CHAIRMAN COLVIN: And they will be filed?

MR. GIBSON: I have no reason to believe that they don't. I'm sure that our Director has some discretionary authority in terms of emergency actions, and I can't cite to you what the specific requirements are for him to act on emergency action, but probably something like that exists.

MR. CARVALHO: Mr. Chairman, if I might clarify that matter. Our Administrative Procedures Act requires that when the Council takes an action, that the filing shall be done forthwith and it becomes effectively law -- in this case it repeals a law or a regulation -- within 20 days.

The Council was fully aware of the ramifications of its responsibility and it weighed the responsibility of this Commission finding it out of compliance with its responsibility to its citizens in addressing both unequal treatment under the law based on the lack of rational basis, the absence of a rational basis, and the consideration and violation of civil rights.

In the state of Rhode Island, the recreational people don't have a limit on the number of lobsters they can possess. They can have five lobster traps, but they effectively could have more than 100 lobsters, so to impose a possession limit different on its other citizens, even though they be commercial, involves now a civil rights issue.

Absent that, it's the issue of treating industry members or people under the same license differently, without a rational basis. There is no rational basis for taking this user group and treating them differently than any other license holder.

The Council has looked at this over a year, and it's a serious matter. It's been through the courts and through this body. And the Council was left with the idea or the responsibility of treating their citizens differently, in effect discriminating against its citizens, and it felt that its responsibility not to discriminate against its citizens was a stronger cause.

And it brings this question now in full circle back again to this body. If it's clear to our Council and the people in our state that it is simply a discriminating regulation, then perhaps this body needs to readdress it again.

CHAIRMAN COLVIN: George.

MR. LAPOINTE: This body, as a matter of fact, did decide to address it again. Mr. Chairman, I would move -- and staff can look at the language. We have an amendment. The amendment has compliance measures in it.

And my motion would be that the Lobster Management Board recommend to the ISFMP Policy Board -- and correct me if I'm wrong, do I need to get it to Commission there as well? -- and that the Commission find the state of Rhode Island out of compliance with Amendment 3 to the Interstate Fisheries Management Plan for American lobster because of their -- I'm going to use the word "recision" -- recision of the restriction on non-trap caught lobster which is currently in the plan at 100 per day, 500 per trip.

And the measure they would need to do to come into compliance with that would obviously be to reinstitute the 100/500 per day; or given the protection of the civil rights of their citizens, they could also put 100 fish lobster per day possession limit on other -- don't put that in the amendment, I'm sorry. Let's leave it there.

MR. CARVALHO: That's welcomed and that was suggested at Council meeting that if we have a possession limit, that the possession limit, whatever it is, apply equally across the Board to all users, so we recognize and appreciate your suggestion.

MR. LAPOINTE: I'm not going to make that part of the amendment.

CHAIRMAN COLVIN: I think it's pretty clear on the record what the motion calls for and so while it's being edited, I'm going to ask if there's a second to the motion.

MR. AUGUSTINE: I'll second it.

CHAIRMAN COLVIN: Seconded by Pat Augustine. Discussion? Pete Jensen.

MR. JENSEN: I have a process question. This was not on the agenda that we would consider compliance by Rhode Island. And I'm not quite clear at this point what our rules are about prior notice, but it was always my impression that we did not take these kinds of actions without some kind of prior notice.

CHAIRMAN COLVIN: I'm not sure that's the case, and certainly in this case the state itself brought the issue

forward.

MR. GIBSON: We didn't ask for non-compliance, but as kind of a curtesy notification to the Board.

CHAIRMAN COLVIN: And they came forward with it voluntarily, although perhaps not desiring this action, certainly aware that it was a possibility.

I'm going to ask the staff that's here to advise us whether it's their belief that issues of this nature require prior advertisement before they can be acted upon. Bob.

MR. ROBERT BEAL: I was just reading through the charter, and there's not any mention of any notice as far as meeting agendas or announcements or anything like that. However, there is a provision in the charter that out-of-compliance findings must start with the Plan Review Team.

The Plan Review Team reviews compliance of any Management Plan, and the Board can request at any time that the Plan Review Team review the plans, and then Plan Review Team submits a written report to the Board, and then the Board makes a motion like this after the fact.

So, there is a question if that step has been kind of skipped in this process.

CHAIRMAN COLVIN: It may have been skipped this morning, too. George.

MR. LAPOINTE: Because of that, I'm going to move, too, that this motion be tabled for two reasons: (1), we should follow the process and it should be referred to the Plan Review Team; and secondly, as we deal with this issue, I would rather it be dealt with correctly and from a procedural standpoint and we deal with the substance of the issue, I mean, because it is a sensitive issue.

CHAIRMAN COLVIN: Pat.

MR. AUGUSTINE: I would agree as the second, Mr. Chairman, but I would like to make sure that the language is exactly correct as you have stated, George.

MR. LAPOINTE: That is fine with me.

CHAIRMAN COLVIN: Now, you're now moving to table this motion, George?

MR. LAPOINTE: I'm open to --

MR. SMITH: Someone else needs to.

MR. AUGUSTINE: I seconded it.

CHAIRMAN COLVIN: Pat Augustine seconded the motion.

MR. SMITH: You can't table your own motion.

CHAIRMAN COLVIN: I think we would -- if there is an intention to defer action on this motion, it would require another member of the Board to offer a motion to table.

MR. LAPOINTE: Because of the --

MR. NELSON: So offered, Mr. Chairman.

MR. LAPOINTE: Is it more appropriate that it be withdrawn at this point and a new motion directing that the PRT review the issue? Is that procedurally more correct?

MR. JENSEN: That gets added to the table.

CHAIRMAN COLVIN: I think, yes, I would agree with Pete Jensen. I think that what I would suggest is that if you want to keep the issue on the radar screen and to provide essentially some assistance in Rhode Island in terms of the Board's thinking on this matter, that the motion could stay tabled with direction in a motion to table to ask for evaluation and a report by the Plan Review Team for action at the time, et cetera. You've got it, John.

MR. NELSON: The June meeting, Mr. Chairman.

CHAIRMAN COLVIN: Thank you.

MR. NELSON: Well said, Mr. Chairman. I echo that.

CHAIRMAN COLVIN: Is there a second to John's motion to table to June? Pat.

MR. WHITE: Yes.

CHAIRMAN COLVIN: All right, moved and seconded to table the motion to the June meeting and to provide an opportunity for a PRT review and recommendation. Discussion on the motion to table?

No, the motion to table was made by John Nelson and seconded by Pat White. Discussion on the motion to table? Bruce Freeman.

MR. FREEMAN: The question I have isn't a procedural one, it's a philosophical one. And the thing that's disturbing to me on this is this smacks of exactly the issue we're dealing with with scup and it's very concerning.

The question I'd have, Jerry, of you representing Rhode Island, if, in fact, one of you fishermen has a federal permit and that permit requires certain size limits or bag limits and they're different than Rhode Island's, how do you deal with that?

MR. CARVALHO: In the question of state versus federal, it's the most restrictive of the two. And that's what --

CHAIRMAN COLVIN: All right, hold it, time out. I've got to ask whether this discussion is germane to the motion to table. I don't think that it is.

I mean, I agree with you. I'm kind of fascinated by some of these implications myself, Bruce. I'm similarly

fascinated by the implications of the unwritten Attorney General's position in Virginia, but I think we need to discuss them off the record.

Is there discussion on the motion to table? Seeing none I'll take the question. Is there objection to the motion to table; abstentions. The motion carries.

That concludes the business on the agenda. I have a brief announcements before everybody gets up. On behalf of New York and New Jersey and the National Marine Fisheries Service, I want to make sure that everyone here is aware that on April 17th and 18th in Stamford, Connecticut, there will be a Lobster Health Workshop that is sponsored by lots of agencies, including the three I just mentioned and a bunch of others, that will examine issues relative to lobster health in the context of the Long Island Sound problem.

I have with me a handful -- I don't have with me now, they're up in my room -- a handful of the fliers that I have left. If anybody is interested in the workshop announcement, would you see me and I'll make sure you have one before you go home. Eric, or Harry, do you want to add anything to that? No, okay. It's the 17th and 18th; it's a Monday and Tuesday.

MR. SMITH: I would add one thing.

CHAIRMAN COLVIN: Eric.

MR. SMITH: April 17th is an open session, informative session. Don't plan on coming for a second day unless you're invited, because that day is for the local managers and the agencies to plan action. But day one, which is a Monday, is the informative part.

CHAIRMAN COLVIN: Thank you. We stand adjourned.

(Whereupon the meeting was adjourned at 7:35 o'clock p.m., April 4, 2000.)

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