

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

**Crown Plaza Old Town  
Alexandria, Virginia  
August 17, 2009**

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1. **Approval of Agenda by consent** (Page 1).
2. **Approval of Proceedings of May 5, 2009** by consent (Page 1).
3. **Motion to initiate an addendum to the American Lobster FMP that incorporates the technical committee recommended reference points from the 2009 Lobster Stock Assessment** (Page 7). Motion by George Lapointe; second by Dan McKiernan.
4. **Motion to table to the annual meeting** (Page 9). Motion by Dave Simpson; second by Rep. Peake. Motion carried (Page 10).
5. **Motion to reconsider the tabling motion** (Page 12). Motion by Bill Adler; second by George Lapointe. Motion carried (Page 13).
6. **AMENDMENT TO PAGE 10 MOTION: Motion to amend to include, as another alternative to take to public hearing in this addendum, the reference points recommended by the peer review panel** (Page 14). Motion by Dave Simpson; second by Tom Fote. Motion carried on Page 22.  
  
**ORIGINAL MOTION ON PAGE 10 REWORDED AS FOLLOWS: Move to initiate an addendum to the American Lobster FMP that includes the alternatives; one, the technical committee recommended reference points from the 2009 Lobster Stock Assessment; and, two, reference points recommended by the peer review panel.** Motion carried (Page 15).
7. **Motion to approve Addendum XV for public hearing** (Page 17). Motion by George Lapointe; second by Bill Cole. Motion carried (Page 26).
8. **Motion to implement a minimum escape vent size of 2 inches by 5-3/4 or 2-5/8 inch circular in LMA 6 effective June 1, 2010** (Page 24). Motion by Dave Simpson; second by Pat Augustine.  
  
**ABOVE MOTION REWORDED ON PAGE 36: Motion delay implementation in LMA 6 a minimum escape vent size of 2 by 5/3/4 rectangular and 2-5/8 circular until June 1, 2010.** Motion carried (24).
9. **Adjourn by consent** (Page 29).

## ATTENDANCE

## Board Members

George Lapointe, ME (AA)	Joel Hovanesian, RI, proxy for Sen. Sosnowski (LA)
Terry Stockwell, ME Administrative Proxy	David Simpson, CT (AA)
Pat White, ME (GA)	James Gilmore, NY (AA)
Sen. Dennis Damon , ME (LA)	Pat Augustine, NY (GA)
G. Ritchie White, NH (GA)	Brian Culhane, NY Chair/Proxy for Sen. Johnson (LA)
Douglas Grout, NH (AA)	Peter Himchak, NJ DFW, proxy for D. Chanda (AA)
Rep. Dennis Abbott, NH (LA)	Tom Fote, NJ (GA)
William Adler, MA (GA)	Loren Lustig, PA (GA)
Dan McKiernan, MA, proxy for P. Diodati (AA)	Bernie Pankowski, DE, proxy for Sen. Venables (LA)
Rep. Sarah Peake (MA) (LA)	Bill Cole, NC (GA)
Mark Gibson, RI (AA)	Harry Mears, NMFS

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

## Ex-Officio Members

Kim McKown, Technical Committee Chair  
Joe Fessenden, Law Enforcement Committee Chair

## Staff

Vince O'Shea	Toni Kerns
Robert Beal	Brad Spear

## Guests

David Spencer, AOLA	Jerry Carvalho, RI Fishermen Alliance
Bonnie Spinnazzola, AOLA	Julie Defilippi, ACCSP
Maggie Raymond, Associated Fisheries of ME	Bob Ross, NMFS – NE
Diane Borggaard, NMFS	

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Presidential Ballroom of the Crowne Plaza Hotel Old Town, Alexandria, Virginia, August 17, 2009, and was called to order at 2:00 o'clock p.m. by Chairman Brian Culhane.

### **CALL TO ORDER**

CHAIRMAN BRIAN CULHANE: Good afternoon, ladies and gentlemen. I'd like to call the Lobster Board Meeting to order.

### **APPROVAL OF AGENDA**

The first item on the agenda today is the approval of the agenda. You should all have a draft agenda in front of you. Does anybody have any items they'd like to add to the agenda at this time? Pat.

MR. PATTEN D. WHITE: I would like under other business maybe to discuss the disparity between state and federal regulations in the Outer Cape.

CHAIRMAN CULHANE: Okay, we can give you a couple of minutes under other business for that. Dan.

MR. DANIEL J. McKIERNAN: Yes, under other business discuss the interaction of the Lobster Fishery and the Jonah and Rock Crab Trap Fisheries.

CHAIRMAN CULHANE: Okay, so we'll add those two items under other business. With those changes and no objections, I will consider the agenda approved.

### **APPROVAL OF PROCEEDINGS**

We have the Proceedings from the May 5<sup>th</sup> meeting. Does anybody have any changes to those proceedings? Seeing none, those proceedings are approved.

### **PUBLIC COMMENT**

We have a couple of minutes for public comment for items that aren't on the agenda. We don't have anybody signed in at this time. Does anybody have any items they'd like to discuss that are not on today's agenda? Seeing none, we will move on. I have one order of business that I'd like to bring up. We have a couple of new commissioners with us today.

### **INTRODUCTIONS**

Since this is the first meeting of the week, I get the pleasure of introducing a couple of new commissioners. First, from the Commonwealth of Massachusetts we have former New Yorker Sarah Peake as the legislative representative. From the state of Pennsylvania we have a new governor's appointee, Loren Lustig. Also, somebody new here today, I believe some of you might know Joel Hovanesian from Rhode Island, and he is here as proxy for Representative Susan Sosnowski. If there is anybody I've missed, please raise your hands. Mark.

MR. MARK GIBSON: Mr. Chairman, relative to Mr. Hovanesian, he is listed as a meeting-specific proxy on Bob Beal's roster right now. We don't know if that was the senator's intent, and we're trying to verify by finding out what her actual letter said. We seem to think that he was to be her ongoing proxy for some time, and it matters relative to voting on matters this week. I don't know who might be able to check on that letter. I don't have a copy of that to see what her intent was. Thank you.

CHAIRMAN CULHANE: Okay, thank you, Mark. Okay, moving on to Item Number 4, we have a discussion of Management Response to Assessment Results. We have a TC memo and Kim McKown will give us a review of that. I think Toni has something she would like discuss just before we get into that.

### **DISCUSSION OF MANAGEMENT RESPONSE TO ASSESSMENT RESULTS: ADVISORY PANEL REPORT**

MS. TONI KERNS: The Advisory Panel met to review the stock assessment in June, and so I have the Advisory Panel's Report and their recommendations to the board prior to going through the TC response to the assessment. Bob Baines apologizes for not being able to be here. His intention was to come, but some issues came up and so he is unable to make it to the meeting, unfortunately.

Following their presentation of the stock assessment, the AP was concerned for the lobster stock health in Statistical Area 514. That area is part of the Gulf of Maine. The AP had recommended that the Area 1 LCMT is made aware of the results of the assessment and also pay particular attention and focus on 514 in a presentation to them.

The AP noted that if the board considers action for Area 514, that they should advice from the LCMT early on in the process. The AP recognizes the tremendous value of lobster research, and they recommend that states and agencies work collaboratively to secure designated long-term funding for lobster research and data collection on a regional basis.

The AP requests feedback from the board on ways that they can help facilitate this process, so they are looking to help with this effort; and so if the board could provide feedback to them, that would be wonderful. For the specific area reports, both the Area 2 and Area 6, there is concern from AP members about the decline and the suitability of the lobster habitat in those areas.

Area 3, there is continued concern over the increased number of crab traps as was previously reported and since that item has been added to the agenda, I won't go fully into the specifics of that. The Area 6 fishermen were interested in extending their v-notch program through the conservation equivalency process.

Lastly, the AP wanted to note that they recognize that there are challenges that the board is going to be seeing in the future, and those challenges specifically come through managing effort in the Lobster Fishery, finding the appropriate level of effort as well as balancing lobster fishing with other resources, including working waterfronts, alternate energy resources and other fisheries that compete with the waters of lobster fishing.

The AP also commented on a couple of other issues that we will be discussing throughout the meeting so I'll hold those comments until those issues come up. Does anybody have questions on this AP Report?

MR. GEORGE D. LAPOINTE: Under managing effort, what did they suggest or was it just an issue being raised?

MS. KERNS: George, I think it was that they recognized that it was going to be one of the more challenging issues that you guys were going to be facing as you move forward with lobster management. David Spencer is in the back of the room. He is a part of the AP. If he has a different perspective, I welcome his comments at this point.

MR. DAVID SPENCER: This really wasn't asking for specific action. It was just kind of an awareness to start a dialogue that we recognize in the future

with all the alternative energy projects coming off the coast and aquaculture going out there and LNG terminals and that ground will be disappearing. That's separate from all the other issues we face in the lobster industry, so I think it's something that we need to be aware of. Certainly, the AP is eager to start a dialogue in how we get there from here. Thank you.

CHAIRMAN CULHANE: George, did you have a followup?

MR. LAPOINTE: Just to let people know if they haven't been reading the papers, we held a series of meetings along our coast about managing effort, the culmination of two years of discussion in our Lobster Advisory Council, and the end product was about 14 T-shirts being printed up that say "do nothing" on them. It was let somebody else control effort, so we've got a lot of discussion before we get much traction on that issue.

CHAIRMAN CULHANE: Okay, any other discussion? Okay, Toni has one more thing.

MS. KERNS: As Kim goes through her presentation I want to remind the board about reference points. Staff passed out to you a beautiful colored table, which is a little cheat sheet for you on stock assessment reference points. According to the way the FMP is written right now, we are following the reference points of the Collie-Sissenwine Model.

That means that the FMP states that the 2009 CSM results of the model is what is in place. If the board wants to take action to change those reference points, we will need to do this through an addendum. Currently we are overfishing in all three stock areas according to the FMP, and we are depleted in Southern New England. We are not above the target for Georges Bank. We are above the target for Gulf of Maine. Green means good, red means bad, if we didn't pick that up on the chart, just so you are aware of the reference points, and this will help you I think through Kim's presentation. Questions?

MR. WILLIAM A. ADLER: Toni, when we got the stock assessment the last time, there were two models being used, remember? There was the Collie-Sissenwine and then there was the University of Maine one, or something like that. Everybody, I thought, like the University of Maine one better. Am I correct?

MS. KERNS: I can't speak for everybody, but that's what the technical committee had recommended, yes.

MR. ADLER: Okay, so what you're saying is in order to transfer over to that other one we need an addendum?

MS. KERNS: Yes, in order to change the reference points we need an addendum.

## **TECHNICAL COMMITTEE MEMORANDUM**

MS. KIM McKOWN: Thank you, everybody. I would like to talk about the technical committee. We met at the end of July to discuss the items that the board had charged us. We were tasked to give the board guidance on the 2009 assessment. One thing the technical committee recommends is that the board adopt the reference points that the technical committee recommended in the assessment document.

That is the reference abundance and median effective exploitation from 1982 through 2003. We are not recommending that the board go with the reference points recommended by the peer review. Our reasons for that are, number one, there is uncertainty in both the stock/recruitment relationship and other parameters in the various models.

That prevents us from estimating what we feel is a reasonable biological reference point. That's, frankly, where we'd like to be, but at this point we still can't get there. In the meantime we feel that the reference points that the technical committee is recommending that's in the stock assessment is more risk adverse than the reference point that the peer review recommended.

The median reference points reflect the conditions experienced by the fisheries for the last 25 years. This slide shows two graphs with information on reference points for Southern New England. Currently the abundance is at historic low levels, and we also have seen historic low exploitation.

Okay, this top graph is the reference abundance, so we can see low levels in the eighties, increases to a peak in the late nineties. Currently we're at almost the lowest level that we have seen in the time series. Exploitation was pretty flat most of the time series and it has gone down. The dashed line on both of the graphs, that is the reference points that was recommended by the peer review.

If you look you see that they're only a couple of points in the abundance that are actually below this reference point level. Even when you look at

exploitation, most of the exploitation rates are below the reference point that they recommend. The reference point that the technical committee is recommending, the median abundance is this line here, and we feel that is much more risk adverse.

We do feel that the Southern New England Stock is depressed and needs a rebuilding strategy to attempt to regain its former productivity. We have seen very low levels of recruitment in recent years. Setting threshold abundance and threshold exploitation, threshold abundance above and – sorry, abundance below and exploitation above are not going to make it easy to actually make any rebuilding strategies.

Okay, for the Gulf of Maine, if you look at the top graph, which is the reference abundance, again the peer-reviewed reference points is below any of the abundance values in the whole time series; so if we were going to go with that reference point we haven't even seen that low of abundance, so we'd be waiting until we went below levels that we currently have seen. Exploitation is above most of the values.

Our feeling is if we go with the technical committee reference point, that will increase the probability of maintaining the current high abundance and steady exploitation rate that we have seen in the population for the last 15 to 20 years.

For Georges Bank, again, the stock conditions are similar to the Gulf of Maine. We've got high abundance, pretty steady, and actually low exploitation at this point. Our goals are to maintain a fishery that's very small and productive. At this point, again, if went with the peer review reference points, the abundance is below anything we have seen in the time series. We just feel that is not risk adverse at all.

We feel that there is an immediate need for stock rebuilding for the entire Southern New England area and for portions of the Gulf of Maine, in 514. Overfishing is not occurring in any of the three stocks. Southern New England is the only depleted stock. The abundance levels are lowest that we have seen since the early 1980s, which you saw a couple of slides ago.

Exploitation rates and effort have declined in recent years, but effort level is still about twice the level that it was in the early eighties when it was similar abundance levels. Recruitment has stayed very low since 1998. The slide you see on the left is estimates of recruitment. We seen a little bit of an upturn in recent years, but we feel most of that upturn was due

to the Rhode Island V-Notch Program, and that is currently not going on anymore.

We feel because of general low levels of spawning stock biomass and poor recruitment, that further restrictions are necessary. For all three stocks we think it's important to scale the fishery to the size of current abundance and the environmental conditions. The following recommendations we feel will maximize the likelihood of rebuilding the depleted stocks even if environmental conditions are less favorable.

The goal is to either rebuild or maintain the stock to at or above the historic level, which is either 1982 or 1984 to 2003. First Southern New England we need a 73 percent increase of current stock size to reach that TC-recommended median reference point. The magnitude of this increase, we believe we need at least a 50 percent reduction in the current landings, which are the average landings from the last three years.

It's going to need significant changes to see sustained improvements in the stock abundance. Controls need to be applied to all parts of the fishery, all gear types and also to both the recreational and the commercial fisheries. The TC believes that output controls would be the best measure for rebuilding the stock.

There are several output control measures. The most effective would be a harvest moratorium. This would totally eliminate directed fishing mortality, be the fastest mechanism for rebuilding, and it would maximize the reproductive potential. Another option would be quotas or landings such as TACs or ITQs. This way we would directly control what is being harvested.

There is a concern if we go with quota management that there may be shifts of effort into more productive areas. If we go for input controls, you're going to need severe adjustments to the current input controls. Minor changes such as a thirty-second of an inch gauge increase or a small decrease in trap numbers will not rebuild the stock.

All input controls must be supported by concurrent effort reduction. For effort reductions, first off, we're going to need to get rid of the latent effort that is out there because if we see any sort of increase in the stock we're very concerned latent effort would then be fished and would wipe out any sort of an increase. We also would need to see a trap reduction of at least 50 percent from the currently used traps and also license reduction. On top of an effort reduction we

would also need to see some other type of reduction, and we're going to at least have three suggestions on what additional reduction we would need:

A closed season; the suggestion would be from June to October. This would reduce harvest, maximize reproduction. We also feel that gear should be removed from the water. Number one, that will decrease gear conflicts, but it will also decrease any sort of bycatch mortality of lobsters and other species getting in those traps.

It will also make it much easier to remove abandoned traps. We are concerned about possible recoupage. In the open seasons people are fishing much harder so they would try to gain back what they lost by this closed season. There was also some concern about losses of market by having a closed season.

Another suggestion would be a slot limit, but it would need to be a real restrictive slot limit. Maximize size would need to be one molt minimum to be effective. If we had a 3-3/8 inch minimum size, then the maximum would need to be 3-3/4. This would reduce the harvest on the larger lobsters and would really increase the reproductive potential.

There is some concern because there would be a real increase in the discarding of lobsters, and there was concern there may be a real increase in discard mortality due to that. It is also going to create a very inefficient fishery. People will be out there and have to harvest a lot of animals just to get those few within the slot limit.

Another idea would be closed areas, but if we went for closed areas it would need to encompass large concentrations of spawning adults to be effective, and it would need to be a large area to compensate for migrations of lobsters out of the area.

As far as the Gulf of Maine Stock is concerned, across the Gulf of Maine effort is the highest level that has been observed across the time series. We believe further increases in effort are not advisable. For Area 514, which the Advisory Panel mentioned earlier, they continue to experience very high exploitation rates, and they've also seen declines in recruitment and abundance since the last assessment.

The graphs on the right-hand side are estimates of abundance, and you can see the abundance estimates are below the long-term median. Further restrictions are recommended given the low recruitment and its negative effect on abundance and egg production. The rebuilding suggestion is to increase the gauge to



a minimum of 3-3/8 inches – this would increase the spawning potential – and also to reduce effort; a 50 percent removal of active traps.

For Georges Bank the goal for the stock is to maintain the fishery at small productive levels, and we do not feel we should increase the effort in this area or to have shifts in effort into Georges Bank. Here is a review of the different reference points. These are the TC-recommended reference points. Do you have any questions?

MR. ADLER: In the report somewhere on the Area 514, it mentioned something about increasing effort. The statistics that Massachusetts has shows a decrease in fishermen and a decrease in effort. I'm not sure where that information of an increase – in Area 514 an increase in effort is coming from. I just don't know because I've got the statistics from the state and everything seems to be going down.

MR. McKIERNAN: I think I can just clarify. In your memo it mentions that – on the top of Page 2 it says, "Across Gulf of Maine effort levels in recent years are the highest observed." I think your memo focuses on the entire Gulf of Maine, but 514, of course, is just the portion off I guess New Hampshire and to some degree in Massachusetts, so they're distinct. I did have a question, but I'll hold until we give comments.

MS. McKOWN: Dan is correct, if we go back – can we go back to the slide that I had on effort? That is across all Gulf of Maine, so that's number of traps. That includes Maine, Massachusetts and New Hampshire. I did look briefly at Massachusetts and you are correct, in 514 it went up. In the late eighties/early nineties it was sort of level and then recently it's starting to dip again.

MR. DAVID SIMPSON: I apologize if I missed it, but in the handout I noticed that the technical committee offers a threshold but not a target where the peer review panel did offer both a threshold and a target. I'm wondering what the thought of the technical committee is on what the target should be or why one hasn't been identified.

MS. McKOWN: The technical committee did not believe that we had a good estimate of uncertainty to estimate targets, because in the previous assessment, at least, they used our uncertainty level to determine targets. Our feeling from this assessment is that we really hadn't bounded our uncertainty very well and that we would be better off with just the threshold. Also, we felt that because this is rather a qualitative

reference point that we shouldn't have bounds around it.

MR. SIMPSON: I guess I'm wondering if there is a difference in the confidence level you have around the threshold that you don't have around the target. In other words, what is more difficult about identifying a target versus a threshold? Is it simply that a target – well, I'll just leave it at that; why is it more difficult to identify a target versus a threshold?

MS. McKOWN: Genny, can I steal you?

DR. GENEVIEVE M. NESSLAGE: I believe the last assessment, in order to calculate the targets they used a confidence interval – the standard deviations, I think –

MS. McKOWN: Yes.

DR. NESSLAGE: -- of the parameter estimates to calculate the target. They started with a threshold. That's easier; it's just straight up. It's an out-median of the time series. Then to calculate the standard deviation of that; well, we don't feel confident in our confidence interval, basically, in order to calculate the target, which, of course, would be above or below the threshold. Does that make sense?

Because the model that we may be using now, the University of Maine Model, has an underlying growth matrix that is static and it doesn't change and it really kind of drives the model, it also makes the confidence intervals that come out of that model really, really tight; so tight that we don't really believe that our parameter estimates are being estimated that well, and so we didn't feel comfortable taking these teeny, teeny estimates of uncertainty. You know, you would end up with a threshold that is here and a target that is right above it. We really didn't feel that was useful or probably very correct or definitely not useful for management. I think that's kind of –

MS. McKOWN: There are the parameters that go into the growth matrix. We know there is a lot of uncertainty that is incorporated in there.

DR. NESSLAGE: Well, we couldn't put a number on how much uncertainty that would be, so we didn't calculate targets.

MR. SIMPSON: And so it's just a reflection of the lack of confidence that the technical committee has in the assessment?

DR. NESSLAGE: That part of it.

MS. McKOWN: Yes; and what the peer review did is for at least the abundance threshold they just said, well, we'll use half Bmsy as sort of an idea, and we'll say half of their threshold will be the threshold and we will use their threshold as the target. That's how they came up with it and we'll just take 90 percent of the exploitation will be their threshold, so they didn't incorporate any model-based uncertainty into their estimates.

MR. P. WHITE: I think you just started to answer part of my question; not being a biologist, but is the abundance target then based on what you think Bmsy is and some percentage of that? I do need a little bit more explanation on you arrive at the target and the threshold.

MS. McKOWN: The target is just based on looking at the abundance time series and saying what was the median value over a certain number of years, and we picked '82 to 2003 for Gulf of Maine and Georges Bank. We had a shorter time series for Southern New England, so it was '84 to 2003. It is not a biological reference point.

We actually estimated some in the assessment. Again, they did not seem reasonable at all. The F 10 percent was very, very low, and it just did not seem reasonable when you looked in light of the fact that the Gulf of Maine stock had been increasing for the past, what, 15 years, and it would be saying that we were overfished.

We believe part of the problems are probably due to not having a good idea on the stock/recruitment curve; the uncertainty, as we were saying, with the growth matrix; the different parameters that go into it; natural mortality. All of those uncertainties we feel we need more information on to develop reasonable biological reference points. That is one of the reasons we feel we should go precautionary because we don't know how this median relates to maximum sustainable yield. Does that answer your question?

MR. P. WHITE: Almost; I'll see you later.

MR. GIBSON: Kim, could you remind me how the size of the base model from the University of Maine – I mean, this is for the Southern New England area – reconciled all of the trawl surveys. It strikes me that there are different – at least in reference years different patterns in the trawl survey indices; for example, Long Island Sound remains quite low versus Rhode Island's Trawl Survey which is showing some measurable increases in abundance

and continues to do so through the spring of 2009. I can't remember what the federal survey and the New Jersey surveys looked like.

There seems to be differential patterns in recent years but not through the decadal time series. That suggests to me that there are differences occurring within the stock – geographically within the stock region, but yet we get one signal out of it that says this level of abundance is too low. I'm concerned and certainly members of the Rhode Island industry are concerned that there have been improvements on a more local scale that are not going to be recognized and in effect we're getting dragged down by a problem area that has little to do with the Rhode Island lobster population and fishery dynamics there.

MS. McKOWN: As far as the model is concerned, it's actually looking at the Rhode Island Spring Survey, Connecticut's Spring Survey, and the NMFS Spring Survey. Rhode Island and NMFS both give a little increase the last few years. You can see this increase here in the recruitment. Where you are seeing that increase, you don't see that in the Connecticut Survey.

So, between two of the three surveys showing it, plus when you look especially offshore, we are starting to see some large animals out there. The University of Maine Model is saying, well, things might be turning up a little bit at the end. We are concerned, though, that some of that may be due to the V-Notch Program. That's not a continuing program and this could be short-lived. Genny, do you have anything else to add?

DR. NESSLAGE: My impression is fitting that model is that the Rhode Island Survey is largely driving the – I wouldn't say driving but is a major contributor to the overall stock blip up at the end there. The model doesn't fit the other surveys as well as it fits the Rhode Island Survey, as I recall. I'd have to look back but that's my memory of it. In that sense, if Rhode Island is not reflective of the whole stock you could be in trouble there as well for the whole stock.

MR. McKIERNAN: Actually, I would ask that the conversation be structured at this point. Maybe we should talk about Southern New England and then maybe we talk about Gulf of Maine, because I think the interests are so different and the discussion is going to be so different.

MR. ADLER: These models and the reports and the surveys you used for the model; did they include the

latest round of regulations that have gone into the Southern New England – you know, the maximum size and things like that – did that get included in your picture when you drew up the stock for Southern New England?

MS. McKOWN: The assessment only went to 2007. Toni said it took place starting in 2008, so then it would not have been included in the assessment.

MR. ADLER: All right, so the latest efforts that they have done down there to help were not taken into account in this particular thing; is that correct?

MS. McKOWN: They would not have been included; but as Toni points out, they were in response to the last assessment, to the 2005 assessment.

MR. LAPOINTE: Mr. Chairman, I want to restructure the discussion, too, and it's not about the assessment because we've already accepted that. It's about what we do with the technical committee recommendations, and I have a motion which is going to be up on the board. **The motion is to initiate an addendum to the American Lobster FMP that incorporates the technical committee recommended reference points from the 2009 Lobster Stock Assessment.**

CHAIRMAN CULHANE: We have a motion; is there a second? I have Jim Gilmore as the second. Okay, could we have discussion on the motion? Dan.

MR. McKIERNAN: My question is not about the assessment, but it's about the technical committee's memo. What troubles me is that Area 514 is the focus and actually a call for rebuilding of the stock in Area 514. Yet 514 is an arbitrary NMFS statistical area that doesn't include any Maine Fishery.

I don't know to what degree New Hampshire's Fishery is included in that, and I'm not sure that the trends in New Hampshire or the trends in Southern Maine are any different than what is going on in 514. What I do know is that 514 comprises almost all of the Massachusetts portion of Area 1. For me to convene this LCMT along with my other states and talk about managing differently for one-third of the LCMT is a difficult task at best.

I guess I wonder does the technical committee really want Massachusetts to break Area 1 and to manage it separately because I can guarantee you that when this conversation starts with the industry, either they'll

show solidarity and say do nothing or the two states will throw the third one under the bus.

I just don't understand how we go about managing a NMFS statistical area separately within a conservation zone. I'm looking for guidance on that. I'm looking for guidance from my fellow delegations of Maine and New Hampshire because if this proceeds we're all going to be sitting in a room together. We might as well as have this conversation sooner than later.

I can tell you that in 514 things are changing; and as Bill mentioned, we have the least amount of effort that we've seen in 12 years measured both in permits, because we've really squeezed those, reduced those dramatically, with the least amount of traps, the least amount of traps hauls, and this year the landings are up.

Now when I say this year I mean the year 2009. We see an increase in the landings. According to the SAFIS Report, the average transaction of lobsters is up about 20 percent. We know that this is happening, and so we're seeing positive recruitment signs that were forecasted by the lobster project leader, Bob Glenn, from his juvenile survey. So we're seeing improvements in recruitment. If we do go down this road I think it's going to cut the LCMT – you know, the legs out from under it; and if that's what the board wants to do, then so be it.

MS. McKOWN: My perspective, as being one of the technical committee, we didn't really discuss very much about the fact that this is a subarea of Area 1, but we did notice this portion of that stock seemed to have a different trajectory. This is one thing that we brought up when we discussed the assessment that the Gulf of Maine, depending on what surveys you were looking at, you were getting slightly different outcomes of what is going on with the population.

The feeling was that we should point out the fact, like we did in 2005, I believe, also, that Area 514, unlike the rest of the Gulf of Maine, it doesn't look like a rosy picture. As far as how the board decides to manage it, whether you manage it as a different area or whether you manage all of Area 1 to the lowest common denominator, I think that is more of a decision than a technical decision.

MR. GIBSON: Mr. Chairman, I certainly echo Dan's concerns again about geographic differences within the stock assessment if not lobster management areas and the difficulties that is going to present to us. That's a little bit ahead of where I was thinking. In

thinking about this motion, if I remember the peer review panel advised us not to abandon the CSM Model for purposes of assessment in the future or judging the status of the stock. I think in fact they suggested that we carry them both forward and consider them both. This motion would effectively jettison that CSM, wouldn't it, for purposes of judging status?

MS. KERNS: Mark, just in terms of reference that you could give the stock assessment committee, you could ask them to use both the University of Maine Model and the Collie-Sissenwine Model at the next assessment so that they would continue to look at Collie-Sissenwine in order to get a picture of the stock. I'm going to ask Kim to refresh the board's memory on why the peer review panel said to use both of them in the future and what kinds of information that the Collie-Sissenwine Model could give you versus the University of Maine.

MS. McKOWN: Part of it is the Collie-Sissenwine is more of a simplified version of the University of Maine. It's basically two length bins as opposed to 35 length bins. It doesn't require quite as many parameters to estimate as the University of Maine Model, but it also doesn't incorporate the length structure, so it does give some different estimates.

They felt that there were positives and negatives on both approaches, and that's why they recommended utilizing both in future assessment. They did feel that the length-based model was the way to go. That's how many lobster fisheries and crustacean fisheries are being managed these days are with a statistical length-at-age model. They didn't want us to jettison the Collie-Sissenwine.

MR. ADLER: I, too, agree with Mark's comments. We're trying to figure out whether the motion that's on the floor here; is it basically to accept the University of Maine Model for our future use? I wanted to just get clarification; is that what that motion would do and jettison the Collie-Sissenwine Model?

CHAIRMAN CULHANE: Well, the next person I had on the list was George and is the maker of the motion and maybe he could clarify what he meant by the motion, but I don't see anything in what I read that that specifically says that. Maybe George could speak to that.

MR. LAPOINTE: I concur, Mr. Chairman. What we were asked to do was consider the technical committee reference points. They made some

recommendations and so my motion will incorporate those in the plan through an addendum. What we do in the future, I thought Toni stated it pretty well. When we do the next assessment, in terms of the terms of reference let's make sure that the Collie-Sissenwine is part of that so that in fact we've got a mix of assessment tools to look at so we can do the best job we can.

MR. DOUGLAS GROUT: Part of my conundrum here is based on the fact that you don't have a way of developing a biologically based reference point. I took the peer review's comments about the technical committee reference points saying that it really doesn't make sense that you would have a reference point based on the last 25 years where half your values are above the abundance level and half of the values are below.

MS. McKOWN: Because we actually took a static number of years so it ends at 2003, it's not actually that half the values are above and below. We're looking over time over a longer time series. But, you're right, during that period half are above and half are below.

MR. GROUT: And during that period we had growth in at least the landings and we've seen some successful recruitment events even in the most recent years, 2008?

MS. McKOWN: In some areas.

MR. GROUT: But at the same time I certainly was also concerned about the recommendations that the peer review made for reference points, because half Bmsy clearly in the Southern New England stock is not appropriate reference point for that. That's my conundrum with this is I'm not totally committed to the technical committee's recommendation, but I see that there really isn't a viable alternative at least on the table right now.

But I do have one other question just to clarify if we did go with the technical committee's reference point and we do want to, at the peer reviews recommendation, continue to utilize the Collie-Sissenwine Model; is there any disconnect between the Collie-Sissenwine Model and what they come out with as a terminal F and the technical committee's proposed reference points? Can they be measured against each other?

MS. McKOWN: Certainly not how we've done it before. I think I'm going to have to give this one to Genny.

DR. NESSLAGE: One of the recommendations of the peer review panel, which we all thought we would like to try next time, was that we boil the University of Maine Model down to a two-bin model so it matched the Collie-Sissenwine. In that sense we could compare the Fs. The problem that we still run into is that the Collie-Sissenwine, as it's currently set up, the version we have been using historically only allows you to use one survey at a time, so you run it for one survey, you run it for the next survey. Then you add up all the abundances at the end.

That is kind of a really old version of the Collie-Sissenwine and I think if we continue to use it in future, if the board tasks us to, we would like to use a more modern version where we could use multiple surveys at once; and if we do that, if we're allowed to do that, then we can more equally – I guess more easily compare the results of those two models.

I'm not sure that in the end you would want to use the Fs that came out of a two-bin model for the University of Maine, but I think we'd have to take a look at it and see if it performed well or bombed, you know, how it worked out, and I think that comparison would be very informative. Even if we don't end up using the two-bin model, it would give us an idea of how different our Fs might be between the Collie-Sissenwine and the University of Maine Model. As it currently stands, you can't compare the actual values of those Fs because the selectivities are different for numerous reasons. But, yes, that's the plan for the future.

MR. GROUT: I understand the way you'd have to compare it, but these values that come out of either one of these models can be compared against that reference point?

DR. NESSLAGE: They can be compared against their own, so I think part of the confusion that's arising here might be because there is a method for getting a reference point which is calculating the median, right, and comparing the current value versus the long-term median.

MR. GROUT: So what you're saying is you'd come out with two different reference points if you were to use both?

DR. NESSLAGE: Yes. If you look at the answer to the Collie-Sissenwine versus the University of Maine Model, you have two different answers; not because the reference point is – the calculation of the reference point is different but because the model outputs say something different.

MS. McKOWN: Yes, but your stock status may not be different. In this case it is, but part of that is due with current way – the current Collie-Sissenwine Model that we're using where you can only use one survey and you take the landings associated with that survey and run it; you take another survey; you put it together. For the Gulf of Maine the Maine Survey wasn't long enough so we couldn't even use that, so that wasn't even considered.

It's apples and oranges there. Because of that, because you're getting very totally different information from the Maine Survey plus we did get some very different information from the lengths, you're coming up with different answers with those two different models. If we collapsed the University of Maine, would you continue to put the lengths in the collapsed version? Because if the lengths are in there, then it would be very interesting because it's all the same information. That was one of the differences with this. So it might just be looking at the status with those two different models and seeing how they compare.

MR. SIMPSON: I think there is enough confusion over this point at all levels to warrant tabling this motion until the annual meeting. I think we need some more guidance on how we can incorporate the peer review advice, what do we want to use for targets, how are we going to measure them.

I know I'm not comfortable voting on this today even to move it as an addendum. I don't want to do that work on the fly while we're going out to public hearing. I think we want to have a clearer view of what we're trying to do here. **I move to table to the annual meeting.**

CHAIRMAN CULHANE: Okay, we have a motion to table by Dave Simpson; seconded by Representative Sarah Peake. Ritchie.

MR. G. RITCHIE WHITE: David, could you explain again your reasoning for wanting to postpone?

MR. SIMPSON: Well, it just seems, as I said, at all levels unclear how to move forward, what will our reference point be, how do we incorporate the peer review panel recommendation, to hold on to that Collie-Sissenwine because it is informative. There is a great deal of uncertainty so there is some wisdom in running two or three models at once to see what level of consistency you get. I think that's enough there.

I mean, there is reason to hold on to the Collie-Sissenwine in its simplicity because, you know, it's

nice to have 35 bins, but you have got to fill them with something, and I'm not sure what – well, that's a challenge that the data may not be up to. That's my rationale for tabling it. It gives the technical committee time to further develop what the reference points would be and where they would come from, what models and in what combination.

MR. R. WHITE: Followup, Mr. Chair.

CHAIRMAN CULHANE: Go ahead, Ritchie.

MR. R. WHITE: So the tabling is to ask the technical committee to come back to us at the annual meeting with additional information; is that your request?

MR. SIMPSON: Yes, with clearer guidance.

CHAIRMAN CULHANE: Yes, this not debatable. We have a motion to table. Let's call the question. I'll give you 30 seconds to caucus on this and then we'll call the question. Point of order, Dennis?

REPRESENTATIVE DENNIS ABBOTT: Mr. Chairman, I believe that the maker of motion made a motion to table; is that not correct, the first question? It's stated up there as a motion to postpone. He said he made a tabling motion; that's what I heard. We could have it read back by Joe. It's a non-debatable motion. I guess my last point is I'd like to have a roll call vote on this.

CHAIRMAN CULHANE: Okay, well, the motion has been changed to reflect that. We have a request for a roll call vote. Toni, are you ready?

MS. KERNS: State of Maine.

MAINE: No.

MS. KERNS: New Hampshire.

NEW HAMPSHIRE: No.

MS. KERNS: Commonwealth of Massachusetts.

MASSACHUSETTS: Yes.

MS. KERNS: Rhode Island.

RHODE ISLAND: Yes.

MS. KERNS: Connecticut.

CONNECTICUT: Yes.

MS. KERNS: New York.

NEW YORK: No.

MS. KERNS: New Jersey.

NEW JERSEY: Null.

MS. KERNS: Delaware.

DELAWARE: (No Response).

MS. KERNS: Maryland.

MARYLAND: Abstain.

MS. KERNS: Virginia is absent. North Carolina.

NORTH CAROLINA: Yes.

MS. KERNS: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Abstain.

CHAIRMAN CULHANE: I have four votes in favor; 3 votes opposed; 2 abstentions; and 1 null vote. **The motion passes.** George.

MR. LAPOINTE: Does this mean states have to develop plans to come in compliance with the Collie-Sissenwine and we're all overfished and the targets aren't being met in Southern New England and Georges Bank? We're supposed to incorporate this new information to act on from a management perspective; so if we're postponing that, our logical action would to develop plans to come into compliance.

MR. R. WHITE: I guess I'd like to hear a more specific request to the technical committee. I'm still not clear on what it is the technical committee is tasked to come back to us with.

MS. KERNS: That was exactly what my followup was going to be for Ritchie. Dave, can you give the technical committee specific questions either now or within a week of this meeting that they will need to answer that are different from what they have already given you?

MR. SIMPSON: First, there is a couple of differences in notes of what the vote was. Could you tell me who voted for and against, the yes and no? I guess the Chair can't force or break a tie because

New York already voted. I had Maine, New Hampshire and New York voting no. Who was the fourth?

CHAIRMAN CULHANE: There were three nos. I had four in favor, three opposed.

MR. PATRICK AUGUSTINE: Point of information, Mr. Chairman. I believe there were four opposed, New Jersey, New York –

MR. PETER HIMCHAK: Null.

MR. AUGUSTINE: Oh, you nulled.

CHAIRMAN CULHANE: Okay, Dave, you were going to respond to Toni's request.

MR. SIMPSON: Right. Clearly, there are implications, but I'm concerned about all of the tremendous uncertainty around this; and, certainly, the difference in guidance that we got from the peer review versus the technical committee throws me a bit. Initially I was going to offer an amendment to George's motion to include another alternative that would be to adopt the peer review recommendation, which would be my preference.

Doug made the point that I had intended to make, among others, that we're looking at a threshold at which half of the time we would have been overfished during a period that was very productive and continues to be in the Gulf of Maine. Certainly we just don't have a handle on recruitment, and there is no indication at all from the trends of landings and effort survey indices that the F is driving the train here.

We are in something of a dilemma time-wise. By this motion passing, as far as specific questions for the technical committee, I get that they'll just come back and say we told you what we told you, but at the same time I struggle to understand how we're going use reference points that come out of one particular model for management action but still somehow use the Collie-Sissenwine sort of qualitatively to give us this gut feeling, which that doesn't enter into reference points and management action. I'm stuck on that and I don't know how to better ask how are we going to incorporate the peer review recommendations.

MS. KERNS: Dave, I think we need a more specific question because the TC has given advice to the board on their take on the difference between the guidance; and so for me to go to them and say this is

what the board wants you to do, I think that they're going to need more specific direction beyond – they need to know beyond what the guidance they given you what you would like them to do.

The peer review advisory report gave guidance in terms of using the Collie-Sissenwine as a general trend track on the stocks. If you want I can specifically read from that, but they had suggested using the University of Maine Model as reference points. Now, the difference between what the TC thinks those specific reference points should be is from their minds looking at risk and uncertainty. Both the TC's advice and the peer review advice uses the University of Maine Model as the reference points as guided by the peer review. It's difficult for the TC to come back with more information unless you give specific questions to them.

CHAIRMAN CULHANE: Maybe I could give you a couple of minutes to think that over, Dave. There were a few people who had their hands up. Pat.

MR. AUGUSTINE: I'm more confused now than I was before. I think we need another motion, George, in a different format.

MR. GIBSON: Mr. Chairman, to George's questions it is my understanding that we would postpone engaging LCMTs and configuring management actions to meet the reference points until we make the decision as to what reference points we're going to adopt. That's my understanding in regard to that.

In terms of the questions, I'll try to formulate better ones later in an e-mail to the commission. Based on what Genny said, we have multiple models. They generate independent estimates, terminal estimates of stock size, fishing mortality rates, which then can get compared, internally computed, meeting abundances or meeting exploitation rates and so forth, so we have the potential for multiple comparisons.

One model, its reference point against its terminal quantities; another model – and, if one is a check on the other, that's fine, but when the checks don't match, which is the case here, that's the advice we need from the technical committee. When you have multiple models, they don't agree in terms of the assessed stock status, given the peer-reviewed advice to consider multiple sources of information, what is the appropriate way for this board to do that? That's the nature of the question I'm going to be posing to you when I can better formulate it.

MR. LAPOINTE: My question about management actions was largely rhetorical, but we have reference points now, the current reference points, and we are not meeting those. That's where we are. We don't need new reference points; we have them. The motion we can't talk about was going to incorporate the new ones.

It strikes me that we are asking the technical committee for a new in-depth analysis of what they already did. They had multiple models. They did all the comparisons that they thought were valid. I struggle to find out how I'm going to make a judgment about I don't like my technical committee's advice. We rely on them for the technical advice.

Dan asked questions about the management followup. I can argue about that lot, but arguing about the technical stuff is – well, I think we're just going to hold the turn for three months and then we'll do something else.

REPRESENTATIVE ABBOTT: Mr. Chairman, I was struck by Mr. Simpson's comments. He made the tabling motion; and then after that you commented about things you would like to have discussed and that we didn't get to talk about. I feel that making the tabling motion was not out of order, but it didn't allow the board to thoroughly discuss the issue. It seems clear that waiting three months isn't going to do us a lot of good.

I don't know what model should be – I'm surely not a scientist, and I don't know what would change in three months, but I think that we'd be better off if we could get back to discussing where we're going to go today other than just putting this on the table and not taking some action.

It would be my request that we do one of two things; that we have a motion either to remove from the table or we reconsider the action that we just took and go through a thorough discussion about where we should go today as far as moving forward. I think we have those two options waiting ahead of us because I don't think we've done much for the fishery. I don't think we've done much for ourselves by simply tabling the issue that we have been waiting for an answer to. We finally got information from the technical committee and now we're going to ask them to go back and realign your ducks. I don't see much gain to that. That's what I'm thinking.

MR. GROUT: Just to clarify, since we are discussing this motion, while I had concerns about using the median reference point, my biggest concern was the

fact that we didn't have a biological reference point. I clearly thought that the peer review panel's reference points, although a good stab at things as an alternative, were not appropriate either from a biological basis.

I also think that the technical committee and the peer review have accepted a model. They've recommended that we continue to use the Collie-Sissenwine, but I thought the Maine Model was the one that they had accepted. I agree that the technical committee has made their point. They said these are the reference points we think you should be using from the best scientific standpoint.

They may not be perfect right now, and they've clearly stated that they want to have a biological base reference point at some point, but these are interim reference points. I think they made the best stab at it. Originally I was going to ask my state to vote in favor of this, so I do hope that maybe there is some way that we can reconsider this because I think the other options may be worse.

MR. AUGUSTINE: Mr. Chairman, if Representative Abbott would like to make that motion I would be willing to second it. Otherwise, I'll make the motion.

REPRESENTATIVE ABBOTT: The motion to reconsider would have to be made by someone from the prevailing side would be my understanding of parliamentary procedure. I was not on the prevailing side.

CHAIRMAN CULHANE: Do we have any further discussion on this? At this point the motion has been tabled. I'm getting the feeling that this discussion has about run its point unless somebody has further guidance for the technical committee. We're running behind on schedule and unless there is something else on this subject, I would like to go ahead to the discussion on Draft Addendum XV. Bill.

## **DISCUSSION ON DRAFT ADDENDUM XV**

**MR. ADLER: I'll make a motion to reconsider.**

CHAIRMAN CULHANE: Okay, we have a motion by Bill Adler to reconsider the tabling motion; seconded by George Lapointe. I assume this is also non-debatable. Dave, did you have a comment?

MR. SIMPSON: Just a point of order, whether the seconder needs to be on the prevailing side or not?



CHAIRMAN CULHANE: Vince is checking that. Tom.

MR. TOM FOTE: Do you have a simple majority vote or is it more than a majority vote to overturn since it's at the same meeting?

CHAIRMAN CULHANE: Good question; look that up, too, Vince. To answer Tom's question about whether we need a simple majority or not, according to these little cheat sheets that we got for our rules' meeting about a year ago it's a majority vote. We're still checking on the requirement for the seconder.

MR. PETER HIMCHAK: Mr. Chairman, if the seconder has to be – I mean, we cast a null vote, so I would offer up a second to the motion.

CHAIRMAN CULHANE: We just got a ruling on that, and any member may second, so we have a valid motion to reconsider. I would suggest that we do another roll call vote. Is everybody ready? We don't need to have another caucus period, do we? Okay, Toni.

MS. KERNS: Maine.

MAINE: Yes.

MS. KERNS: New Hampshire.

NEW HAMPSHIRE: Yes.

MS. KERNS: Massachusetts.

MASSACHUSETTS: Yes.

MS. KERNS: Rhode Island.

RHODE ISLAND: No.

MS. KERNS: Connecticut.

CONNECTICUT: No.

MS. KERNS: New York.

NEW YORK: Yes.

MS. KERNS: New Jersey.

NEW JERSEY: Null vote.

MS. KERNS: Delaware is absent. Maryland.

MARYLAND: Abstain.

MS. KERNS: Virginia is absent. North Carolina.

NORTH CAROLINA: Abstain.

MS. KERNS: National Marine Fisheries Service.

NATIONAL MARINE FISHERIES SERVICE: Yes.

CHAIRMAN CULHANE: Okay, we five in favor, two opposed, 2 abstentions, and 1 null vote. **This motion carries.** Now we are back to the original motion for the addendum. Any discussion? I have George first.

MR. LAPOINTE: I'm going to ask Toni, as part of the addendum Toni was suggesting I think a smoother way for us to incorporate new reference points in the future, which I'm clearly open to at this point. I don't think we need a change to the motion unless somebody objects to what she is talking about. With her explanation and if there's board concurrence, she would include some language in there for us to consider as part of the addendum incorporating reference points in the future easier.

MS. KERNS: The FMP currently specifically states how reference points are devised or developed and what method we use. We could change that language to be more general to include different types of methodologies. We could say using a median; you could say using msy; you could say using the Collie-Sissenwine. You could incorporate many different types of methodologies.

Then the addendum could have a second part where the board would specifically state which reference points you'll be using for the time being. The board could then decide whether or not they want to go out for public hearings everytime you adopt new reference points or whether or not you want to adopt reference points through point action following peer-reviewed advice.

In this addendum you could have multiple options for the reference points that you're adopting; so beyond what was originally up on the screen, the TC reference points, you could include other options to go out for public comment as well. There are three parts here just to quickly summarize what I said.

One was making a portion of the FMP about what you use to establish reference points more general to encompass many different types of methodologies; two, adopting the actual reference point and then,

three, changing how you specifically adopt those actual reference points.

MR. ADLER: I believe at the very beginning of the conversation way back, hours ago, there was a discussion that we had to do some type of an addendum to get the University of Maine Model into play. I'm not against this. Now, what I understand here is that this motion simply goes forward with developing that addendum that has to come back here and then go out. So, we're not making a decision yet on that, anyway.

Secondly, or thirdly, fourthly, I think that if there were some questions related to this – and I can understand the confusion, also, in all of this – would it be possible, Toni, if questions that were raised could come into you – and maybe you already said this – and be incorporated into that addendum?

MS. KERNS: Yes, we can incorporate questions to the TC, but those questions need to come in as soon as possible, within a week or two of this meeting, so that we have time for the TC to think about the answers to those questions, have a meeting and then get back to the board on those.

MR. ADLER: Okay, given all that, I'm going to support this motion because it gets the ball rolling, but it does not cut off and make something impossible to do. We're only developing an addendum. Anybody who has a question can get it in. It comes back to us and then we move on it after that; I would presume that is correct, and I'll stop now.

REPRESENTATIVE ABBOTT: I think what Bill is saying, to use one of his terms, is we're just starting to mix the jello, Bill, and we're a long way from concrete.

MR. SIMPSON: Well, as I alluded to earlier, **I'd like to make a motion to amend to include, as another alternative to take to public hearing in this addendum, the reference points recommended by the peer review panel.** The addendum would go out with the status quo, which is a standard feature; an alternative that would be the technical committee recommendation; and a second alternative would be the peer review recommendation.

I think as we package this for public consumption I wouldn't refer to them in that light; just simply describe them as alternative reference points and then flesh out the details so that the public can comment

on them without getting into it was this group or that group's baby.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Mr. Chairman, just to clarify where I think we are in the process, the board is discussing now tasking staff and the PDT to develop a draft addendum that would come back at the annual meeting for this board to look at for their decision as to whether or not they liked it and whether or not to go forward to public comment. That's my understanding where you are now.

CHAIRMAN CULHANE: Yes, and actually to Dave's motion, we don't have a second on it yet and I was wondering if that was something that couldn't be incorporated – you know, do we need a motion to do this or could we just incorporate it as a direction?

MR. SIMPSON: If it were accepted as friendly, then it wouldn't need a second.

CHAIRMAN CULHANE: Put you on the spot, George.

MR. LAPOINTE: I think a couple of things; one, we've got recommendations from the technical committee. What judgment are we going to use to say we like the other ones more? If we go out to members of the public, they're going to look at red and green, and they're all going to vote for green except maybe a couple people from some lobster conservation group. I don't see the point of this.

Again, I don't have the information – I have a person on the technical committee who made the recommendation – to second guess their judgment. Then when we go out to the public; I mean, if we're having trouble understanding the differences between models – I'm not putting the public as either ahead or behind me – I think they're going to be in the same boat, kind of squinting and saying, "Huh".

MR. HIMCHAK: Mr. Chairman, in this addendum I think it would be a disservice to at least not say that the preferred option from the board would be what the technical committee recommended.

CHAIRMAN CULHANE: Well, I want to get back to this. At this point Dave has made a motion to include this. It is not accepted as a friendly. Tom.

MR. FOTE: **I'll second it.**

CHAIRMAN CULHANE: Tom Fote seconded. Okay, discussion on this motion; the motion to amend? Mark.

MR. GIBSON: With regard to this motion or the prior motion, would this addendum simply go out to public comment for input on reference point selection or is this addendum also going to contain proposed management alternatives to achieve these reference points and triggering engaging with the LCMTs?

MR. LAPOINTE: The former; it incorporates the new reference points. Again, until we have no reference points we can't structure management measures to reach those reference points, so it's just about the incorporation of the reference points at this point.

MR. JAMES GILMORE: Mr. Chairman, just to the maker of the motion, could we clarify what New Jersey had just brought up? Is it the intent that the preferred alternative would be the TC recommendations and this would just be brought in for consideration or is it going to be that this would be an equal weight in terms of a reference point? I agree with what New Jersey had brought up is that the preferred alternative is what the TC has recommended. This would be more information to say that this was also considered so it will be in the document.

MR. SIMPSON: That was not my intention. I think it would make sense when we see the addendum for the board to identify a preferred alternative. I think that helps the public to comment, but, no, I'm not offering this as a non-preferred alternative.

MR. FOTE: If I'm going out to public hearing sometime in December or January over this issue, I want to be at that point comfortable and make a recommendation for a preferred alternative. I don't have to at this point. I mean, at this point we're waiting to see what happens. We basically have another chance of basically deciding in the annual meeting, so we don't have to do anything with a preferred alternative now. In every addendum we always send out, there is status quo included in the addendum. That's why I have no problem seconding this motion.

CHAIRMAN CULHANE: Okay, I don't see any further discussion on this motion. Are we ready to call the question? Does anybody need time to caucus? The motion is move to amend to also include in the draft addendum reference points recommended by the peer review panel. Motion by Mr. Simpson; seconded by Mr. Fote.

All in favor please raise your right hand; all opposed, same sign; any abstentions; any null votes. Okay, I

have five in favor, two opposed, and three abstentions. **The motion passes and this will be included in the addendum.** Now we are back to George's original motion on the addendum. Tom.

MR. FOTE: I'd like to call the question.

CHAIRMAN CULHANE: Okay, it's just going to take a second to get the original motion back up on the screen.

MR. BILL COLE: Mr. Chairman, for the record there were three, I believe, opposed in that last vote instead of two as recorded.

CHAIRMAN CULHANE: Okay, I stand corrected; there were three nos. Okay, move to initiate an addendum to the American Lobster FMP that incorporates the technical committee recommended reference points from the 2009 Lobster Stock Assessment and reference points recommended by the peer review panel. Motion by Mr. Lapointe; seconded by Mr. Gilmore. Dave.

MR. SIMPSON: Yes, just a little wordsmithing; maybe after "Lobster FMP includes alternatives that incorporates", you know, so it's one or two, because the way it reads now it seems like you're trying to do both. They're alternatives, right, "that includes alternatives".

CHAIRMAN CULHANE: Okay, I think I need to read this one again: **Move to initiate an addendum to the American Lobster FMP that includes the alternatives; one, the technical committee recommended reference points from the 2009 Lobster Stock Assessment; and, two, reference points recommended by the peer review panel. Motion by Mr. Lapointe; seconded by Mr. Gilmore.**

Do we need any time to caucus on this? Is everybody ready to vote? All in favor please raise your right hand; opposed, same sign; abstentions; null votes. Okay, I have eight in favor, no opposed. **The motion carries.** The next item on the agenda is Draft Addendum XV, and Toni has something for us on that.

MS. KERNS: Last week I e-mailed to the board a copy of Draft Addendum XV, and today a copy is being handed out. The copy that is being handed out also includes an appendix of the National Marine Fisheries Service Federal Register Announcement for a control date for the Lobster Fishery, just as information for the group.

The addendum would follow the following timeline. Today the board is considering approval for public comment. The public comment would be in September and October. The board will review that public comment in November, and then the addendum would be considered for final action again in November at the annual meeting.

In 2007 the numbers of traps purchased was the highest level since 1981 in the Gulf of Maine. Abundance levels have remained high in the Gulf of Maine. There is a concern that if recruitment drops or abundance returns to median levels that the stock won't be able to support this type of fishing level.

Limited Access Programs in other areas have the potential to shift effort into the federal water fishery of Area 1 because it's currently the only open access area for the Lobster Fishery. Constraints in the participation in several traditional otter trawl fisheries and the broader use of area closures may also result in a shift of non-trap lobster fishing effort to the Lobster Trap Fishery by vessels that have traditionally harvested for lobsters by non-trap methods. An unchecked increase in effort in the Lobster Fishery as a result of these shifts could result in an influx of fishing operations into the federal waters of Area 1 and could jeopardize efforts to achieve the objectives of the FMP and to rebuild stocks.

The Area 1 LCMT was concerned with an increase in effort in the EEZ, so therefore they recommended that there be limited access for the future in that area of federal waters. There was a challenge in establishing qualification criteria for this area because there is not consistent reporting across all of Area 1.

They considered using landings, but since we don't have reporting for all areas that wasn't able to be used. The LCMT had recommended using just the purchase of trap tags as a qualification criteria. Back at the annual meeting of last year the board asked the National Marine Fisheries Service to put in a Notice of Intent for a control date.

The National Marine Fisheries Service followed and did so, and that control date was January 2, 2009. In the addendum the qualification management options for the Area 1 qualification period would be to prove possession of a valid Federal American Lobster Permit. Second would be proof of Area 1 designation on that federal permit as of January 2, 2009, following that control date; and, lastly, proof of purchase of lobster trap tags for the EEZ waters of

Area 1 for any fishing year between the years of 2004 through 2009, as of January 2, 2009.

If the board recalls from discussion at the last meeting, the LCMT had discussed whether or not to include military hardships or medical hardships. Because of different regulations on how each of jurisdictions and agencies look at medical and military hardships, the LCMT recommended to open up the number of years that an individual could use for proof of tags instead of going with hardships. They felt this would be a better way to capture anybody that may have had a medical or a military hardship.

For the compliance criterion of this plan, the state agencies with trap tag memorandum of understandings with the National Marine Fisheries Service would have to review state records of lobster trap tag orders for the fishing years of 2004-2008 and provide the National Marine Fisheries Service with detailed information so that they could accurately identify all Area 1 lobster participants that meet the qualification criteria.

We would need to establish a date as of when that would be once the National Marine Fisheries Service adopts any regulatory language concerning this addendum. The state agencies would also need to supply the National Marine Fisheries Service with the owner, address information, the federal permit number of the vessel that ordered the trap tags.

Because this action is for federal water fishermen, we would recommend to the National Marine Fisheries Service that they promulgate the regulations contained in the management section of this addendum. Does anybody have any questions about this addendum?

MR. GROUT: Toni, just a clarification on some of the criteria. Criteria C says proof of purchase of lobster trap tags for EEZ waters. Now in many states' case I assume there are some people that do have both state and federal permits, and so the tags that we issue to those folks are NH/EEZ tags so that they can move them between state and federal waters. Are those included as EEZ waters, those things that say "NH/EEZ"?

MS. KERNS: Yes, those are included as federal water trap tags.

MR. ADLER: Mr. Chairman, I'm in favor of this. It's just that I had a question as to what if a state – up there in the Gulf of Maine a state-licensed non-trap

fisherman – forget the EEZ for a minute – and this person has a license to catch lobster, but he hasn't been using traps; can he order traps and he wouldn't be covered under this because it's not EEZ at all; I'm not sure whether this would cover – now forget the EEZ. We know about that. This is a license to catch lobster but he's not using traps now and he is in state waters. Can he order traps and go lobster trap fishing?

MS. KERNS: This addendum only pertains to EEZ waters, so for the regulations in this addendum it only pertains to that. Depending on the individual state rules, entrance into the trap tag fishery would determine whether or not that person could change their non-trap license into a trap license. Maine has different rules than Massachusetts does on how individuals can get into the trap fishery, so I wouldn't be able to specifically answer that because everyone has different rules.

MR. ADLER: Okay, and I suppose the state can do it, anyway, on their own if they had to, I would assume. Thank you.

MR. P. WHITE: Just a question on how does this play into all that mess that we got into with the most restrictive rules?

MS. KERNS: You would still need to follow the most restrictive rule for all trap regulations, so your number of traps would need to be the more restrictive of your state rule, if that is the case. Just to clarify, this addendum doesn't change the number of traps. You still would be able to have 800 traps. It's just that you need to prove that you had purchased at least one trap tag during that time period.

MR. LAPOINTE: **I was going to make a motion to move that we approve Addendum XV for public hearing.**

CHAIRMAN CULHANE: We have a motion to approve by George Lapointe; seconded by Bill Cole. Discussion on the motion. Harry.

MR. HARRY MEARS: Just to comment, Mr. Chairman, I'm going to vote for this to take it for public comment. I'm reading it over once again, and I think it could very likely be confusing to the reader. Inasmuch as it's a commission addendum and as you read proposed management measures, it can be construed to read that once the commission approves a measure based upon public comment and internal discussion, it becomes effective; whereas, obviously, it does not.

That would result a recommendation of the proposed measures to the Secretary. I guess what I'll do is ask Toni, without my being able to take the time to read the preface and statement of the problem, is that right up front and center?

MS. KERNS: I can make it clear under the management options section that these measures are for federal waters and would need a final rulemaking by the National Marine Fisheries Service before they would be a final rule, and the adoption of these regulations by the ASMFC is to forward that recommendation to the National Marine Fisheries Service.

MR. MEARS: Thank you; that would handle it.

CHAIRMAN CULHANE: Any other discussion on this? Do the states need time to caucus? Okay, I think we're ready to take a vote on this. All in favor of the motion please raise your right hand; any opposed; abstentions; null votes. **The motion carries.** Well, we're moving right along now. Discussion of Non-Trap Gear Landings, Toni.

## **DISCUSSION OF NON-TRAP GEAR LANDINGS**

MS. KERNS: Quickly, before I go into the next agenda item, can I see a show of hands of those that think they may want to have hearings for the last addendum. Thank you very much. Included on your CD is a letter from Paul Howard to Vince and Pat, Paul Howard of the New England Fishery Management Council, informing the commission that the council is moving forward with changes to the groundfish days-at-sea restrictions.

During their discussions about groundfish days at sea, at least one council member was concerned about the potential increase in sector effort onto lobsters. Mr. Howard then goes into describing some of the changes of days at sea and encourages effective monitoring of non-trap landings from the EEZ is essential in keeping informed of how much the non-trap sector is landing and if any changes are occurring from these changes of the groundfish sector.

He expressed his commitment to continually cooperate and communicate with the commission on the Lobster Fishery. Currently the commission has the 100/500 rule for the non-trap fishery and states report non-trap landings if they come in through the dealer reports. If those dealer reports show what type of gear, that's how we get the information.

Some states do have more specific reporting from harvesters and so we can get that information from those states that have specific harvester reporting, but because all the states don't have a hundred percent harvesting reporting, some of that information might be a little bit off. I'm going to ask Harry to inform the board of how the National Marine Fisheries Service captures non-trap landings in federal waters.

MR. MEARS: Back in the late nineties we did an environmental assessment when the 100/500 rule was first put in place for non-trap harvest limits. At that time it was the vast majority of mobile gear vessels, that's not essentially all, had a permit under another fishery management plan that did require mandatory vessel reporting. Is this answering your question, Toni?

MS. KERNS: I think so. The FMP reviews do not specifically show the difference between trap and non-trap landings because the plan review team is not a hundred percent sure on the complete accuracy of that information, and so we don't report it. It may be something that the board would want to include in the FMP review.

If the board wants to commit to having a better idea of non-trap landings, we would be gathering them through the states and through the information that we get from the National Marine Fisheries Service, but that would mean probably some slight modification to your reporting requirements; or, we could also just report the information that we have and note that there may be some slight differences. A piece of paper was passed out to the group that was given to me by Maggie that shows what NOAA has for trap reporting and then other gear types and then the gear types that are not coded.

I know off the top of my head that your lobster pot reporting – your landings from lobster pots is not going to be a hundred percent accurate because I know we don't capture all of that in federal waters currently. There are some caveats to these landing levels. Does the board have any thoughts or concerns with the letter that Paul Howard wrote or the way that we currently are monitoring non-trap landings for the Lobster Fishery, or do we have any concerns about these changes in days at sea and how it may or may not affect the Lobster Fishery?

MR. LAPOINTE: I think anybody involved in groundfish has a lot of concerns about how this whole amendment is going to move forward, and it shows good judgment on their part, and this is just one component of it. Paul's answer I thought was

fine; that we keep a finger on the pulse and if it becomes an issue we'll deal with it; and if it doesn't become a big issue, we'll let it alone.

MR. McKIERNAN: I would recommend that in the states annual compliance report that we disclose the amount of landings that we're seeing in the dealer reports or even the catch reports and maybe report on any trends that we might see. Obviously, Maine is not going to see a change in the trends because it will continue to be zero, but Massachusetts, home of most of the groundfish fleet, we would be able to report back to the commission any of those changes. Toni, I don't know if this would require a formal action to ask states on an annual basis to submit that information.

MS. KERNS: We can do that and I can just specifically ask states to provide that information in my memo when I send it out asking for compliance reports, so we don't have to do a formal action.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, it might be worthwhile to get a sense whether any states object to doing this; and then if they do, you might consider doing a motion on it.

CHAIRMAN CULHANE: Is there any objection to doing that by any of the states? Any comments from the public on this issue?

MS. MAGGIE RAYMOND: Good afternoon, my name is Maggie Raymond. I'm the Executive Director of Associated Fisheries of Maine, and I have been since 1994. I'm also personally vested in the New England Groundfish Fishery. I was rather surprised actually to see Paul Howard's letter to the board because I was personally involved in every meeting of the New England Council relative to groundfish sectors, and this issue was never raised publicly.

Nevertheless, I just thought that some of the discussion that happened here already today was a little confused. I wanted to point out that in order to be in a groundfish sector, which apparently this is where the concern is raised, one must have a federal groundfish permit, so the issue of landings from state waters would not really be relative to this issue of whether or not – I mean, non-federally permitted vessels would not really be relative to the issue that Paul Howard raised, for whatever reason he raised the issue.

I just wanted to try to reassure the board that we do not see the possibility of any increases in lobster

bycatch in the groundfish fishery as a result of sector management. Obviously, we do report a hundred percent of our landings and have so since 1994. You know, if anybody has any questions about how sectors are intended to operate, I would be happy to answer those. If anybody has anybody any concerns about that, I'm sure I could address them.

Just for an example, the sector that our association is forming has over 90 permitted vessels, and we expect that about 40 or so will actually be active, so there will be actually a very big reduction in the number of vessels that are on the water as a result of sectors, so it is very difficult to understand how anybody could be concerned about a potential increase in lobster effort from at least the sector that I'm most familiar with. Again, I just wanted to offer the information that I have available. If anybody has any questions for me, I'll be available until about 5:00 o'clock. Thank you.

MR. SPENCER: Mr. Chairman, it appears that the board has conflicting statements of what will happen in the sectors, and it probably goes with the territory given kind of the changing landscape that is kind of indicative of this new regime shift. I don't think sitting back and waiting is good enough even if we have monitoring.

Nobody is responsible for the lobster resource except this board. It won't be the New England Fishery Management Council; it's this word. I think given the uncertainty, I think monitoring is necessary. I also think it's prudent to set up a committee similar to the transferability committee to thoroughly discuss and thoughtfully explore the ramifications of redirection of effort of lobsters through this sector management regime.

I think it should have members of the commission, the feds, industry and somebody that has an intimate knowledge of sectors. Personally, it's difficult when you get this many conflicting statements to really hang your hat on anything. Thank you.

MS. KERNS: I failed to mention that the AP had also spoke about potential shifts from the mobile gear sector into the Lobster Fishery and that they had recommended that the board monitor the mobile gear landings to determine if any effort shifts will occur or will not occur by reporting those landings by gear type in the FMP Review.

MR. ADLER: Mr. Chairman, in light of what David said, is this possible to perhaps ask for a committee to look things over – does that make it too complicated

for the world – or can we perhaps move on that, which was also the AP's recommendation, some type of a small committee? Would that be okay; I mean, can we have that; is that possible? If so, I would like to have that happen.

CHAIRMAN CULHANE: While we're mulling that, George.

MR. LAPOINTE: It strikes me that – we can certainly put a group together – it would be worthwhile for those people who have concerns to write them down for what their specific concerns are. Again, if we try to deal with all the what-ifs, we'll be here for a long time, so it strikes that it will be useful for the board and other people, the New England Council and people in sectors and lobster associations, just have written down here is my concern about what is going on and then get that list and then see where we're going to go with it next.

You know, the sectors aren't going to – the plans aren't even going to be due to NMFS until the September 1<sup>st</sup>; they aren't going to go into effect until next May, isn't that correct, the start of the fishing year. I would like a better articulation of the problem before we task some folks to chase it all down.

MR. JOEL HOVANESIAN: Mr. Chairman, I plan on being involved in the groundfish sector myself, and I actually think that the potential is there for there to be less effort on lobsters because people are going to be allowed a little more flexibility in their fishing operations now. In the past, a lot of times what has happened has been the lobsters have been really a fall-back option because of low trip limits on other species.

With the days-at-sea provisions going away and our increased flexibility to pursue fish, you may actually see people not being as concerned with getting their lobsters and concentrating more on finfish. Thank you.

MR. GROUT: Mr. Chairman, I agree that I think it's something we need, as George put so aptly, to keep our fingers on and our pulse on, and I think Dan's idea to require that we report on non-trap lobster landings in our compliance reports is a good one. The only thing I just wanted to clarify; are you talking about any vessel, both EEZ and state vessels that land lobsters with mobile gear; you're talking both?

MR. MCKIERNAN: Any non-trap gear.

MR. GIBSON: I'm certainly not averse to Bill's idea and industry's recommendation to have sort of a working group or subcommittee of this board and other interested parties think about what might happen to the lobster resource under sector management. I'm not sure we have enough to go on right now for that group.

I'm inclined to go with George's suggestion. Let's get a short list together of all the issues that people can contemplate that might be a problem. We can look at those again in the fall and make a decision as to whether we actually need a working group. The model kind of is this transferability working group.

I'll point out that took a lot of time and a lot meetings, and at the end of the day we still couldn't think through all the issues. I'm not concerned that we'd do much better with this one, but I think we could wait until the annual meeting and see what kind of concerns came up or articulated. Maybe staff could remind us after we go home to get these issues on the table and get them into just a document or bullets and let us hack at that in the fall and see if we need a sub-group to deal with them.

EXECUTIVE DIRECTOR O'SHEA: I think one of the issues here that people are wrestling with is the reality of what the price of lobsters is right now. I remember a time when people thought 400 pounds of sea scallops wasn't a big deal either. People adapted to that. I think putting some thought into this initially may – you know, if the price of lobsters changes down the road, it might be something that's right back on top of this board. Thanks.

CHAIRMAN CULHANE: All right, it looks like that's it from the board. Bonnie, do you have a comment?

MS. BONNIE SPINAZZOLA: Bonnie Spinazzola, Atlantic Offshore Lobstermen's Association. I would just like to mention to the board that unfortunately I think that there is very little known about what is going to happen with sectors. While we're kind of struggling both ways, I think that the lobster industry or really the lobster fishery has a great deal to lose if we're not prepared for what may happen. The other thing, too, is that while there may be fewer vessels fishing in the sectors, I believe – and, again, I'm not positive, but I believe that there still will be active permits, so it may be fewer vessels but more active permits or the same number of permits. That's something that we also need to keep in mind. Thank you.

MR. McKIERNAN: Let me just bring this to some clarity. We had an experience in the Outer Cape where the first sector started. It actually was the second; the first was the hookers. The second was the gill net sector. We saw an apparent shift toward gill netting for lobsters that occurred. We responded by instituting a more conservative rule than what is in the FMP where under Massachusetts regulation gill netters that are authorized to fish in the Outer Cape are limited to two crates of lobsters and not 100 per day because setting gill nets for very large – you know, we're talking ten-pound-type lobsters was becoming routine.

I could envision in a sector as long as you were keeping your groundfish numbers in check, you could continue to fish but for skates or monkfish or lobsters, and I think that's the fear that where there is a will there is a way and fishermen, as has been said, adapt. Those are kind of the unintended consequences that we saw in the Outer Cape that are easy to see if you simply envision that fishermen are going to need some options.

I think it's a good idea for all of us to keep an eye on it, but I agree with the previous speakers that a lot should be becoming much more clearer in the next three months with the sector plans coming in, and then we'll be able to ask questions as state managers, well, what will the boats do when they're not fishing for other species and do you intend to, you know, fish here, there or everywhere. We can ask more intelligent questions after we see the sector plans.

CHAIRMAN CULHANE: Well, I think that's enough on that topic for now. I think we can follow up on George's suggestion. People who have concerns, forward them to Toni, and we can come back to this at the annual meeting. On to Number 7, Toni.

## **DISCUSSION OF FEDERAL GEAR RESTRICTED AREAS**

MS. KERNS: On the Briefing CD there was a letter from Jason Didden on behalf of the Mid-Atlantic Fishery Management Council's Squid, Mackerel and Butterfish Committee to the Lobster Board on the issue concerning the reduction of butterfish bycatch in the Loligo Fishery. To refresh the board's memory on some central pieces of background, there are four gear-restricted areas in federal waters that were set up originally by the New England Fishery Management Council prior to the commission having the lead on lobster management.



These areas were set up to resolve gear conflict issues. The areas that were established were definitely a compromise for all industry participants involved in setting up the GRAs. It was a drawn-out process where individuals definitely made compromises. Everyone wasn't exactly thrilled with the end result, but it was what brought them to the table and everyone could live with.

The gear-restricted areas are all included here in the circled area. Currently the Mid-Atlantic Fishery Management Council is evaluating methods to reduce butterfish bycatch in their Loligo Squid Fishery. One industry member wrote a letter to the council suggesting changes in regulations to Gear-Restricted Area 2 and 3 would help to avoid butterfish.

It's my understanding there has been no evaluation of this proposal to determine if butterfish catch is actually reduced and if there would be any effects on the lobster industry, who uses both Area 2 and Area 3. The proposal for the GRA 3 is to split the area into two parts at the 100 fathom line, and it would shorten the time lobster gear can be used in the area by about 4-1/2 months. For the GRA 2 the proposal would eliminate the gear overlap period.

The council wrote in their letter that it was informing the board that it's investigating this issue, and they were soliciting comments from the board. No one from the Mid-Atlantic Council could come to this meeting. From my understanding with conversations with Jason Didden, who is the staff member for the council, is that they didn't want to take action on this issue without first soliciting comments from the board; nor do I think that they would – they don't have the authority to make specific changes without collaboration with the board since we are the primary lead on lobster management unless they made a specific request to the region to make a change since these GRAs are in federal waters.

Just again to remind the board, there is no investigation as of yet on whether or not this proposal would actually reduce butterfish in their Loligo Squid Fishery as is the intention of the action that they're trying to seek.

MR. ADLER: Just out of curiosity, with the agreement that was finally reached out there after much problems with the gear conflict and everything; is the current situation working now to keep peace out there for the most part?

CHAIRMAN CULHANE: Toni indicated that David Spencer might be able to enlighten us a little bit on

that because he fishes that area. Dave, I hate to put you on the spot, but could you speak to that issue?

MR. SPENCER: The short answer is, yes, it achieves its desired results. In order to understand it, I want to elaborate on how this came out this came about. It was the advent of the offshore deepwater monkfish fishery, the interaction with that and the lobster fishery. There was hundreds of thousands of dollars of gear lost to the fixed-gear fishery, a lot of revenue lost; also revenue lost to the mobile gear fishermen taking pots instead of monkfish out of their nets.

This was facilitated by the New England Fishery Management Council for over a year of negotiations. It was enacted as a gentleman's agreement. There was significant reluctance to put this into regulation. We worked I think a couple years, if my memory is correct, under a gentleman's agreement. It did not solve the problem.

Then the Coast Guard was brought in and this was formalized into regulations. I think it's the perfect compromise. Both sides are unhappy with it to a certain degree. The lobster fishermen are forced to move off of fertile lobster bottom at times of the year because of the regulatory date, and I'm sure this is kind an instance that we're seeing in a letter written here that the squid fishermen have an issue in what they want to catch. That's the long answer to a short question. I think it does work.

MR. AUGUSTINE: Mr. Chairman, just a question to Mr. Spencer, if you would, Mr. Chairman. Have you had an opportunity to read the letter that Captain Lackner wrote and reviewed the changes that have occurred out there, and taking into consideration the fact that when butterfish harvest or catch gets about to 80 or so percent, it has an immediate and direct impact on the other fisheries, including squid, which could be shut down? If you could respond, Mr. Chairman, to that I would appreciate it.

CHAIRMAN CULHANE: Go ahead, Dave.

MR. SPENCER: Yes, I did read the letter. I'm certainly sensitive to the bycatch issue in the squid fishery. I didn't see any documentation to back up his claim. I mean, I'm not doubting him, but everything in the letter seems anecdotal, so I think that's the first issue. I think the other thing that I think people need to realize is there are other potential solutions.

There is significant time, energy and money currently being dedicated to research of conservation

technology and working with nets to reduce the bycatch of butterfish in the squid fishery. That may be another alternative as well, so I think it's fair to portray this as the only answer.

I think the other thing that is important to realize, the restricted-gear area ends at Hudson Canyon, which has been identified as kind of the area of concern. It is a very western terminus of this restricted-gear area, so there are opportunities just on the other side of that canyon to get into the deep water at the times that were indicated would be beneficial to them.

CHAIRMAN CULHANE: Well, at this point the council is looking to see whether we have any comments to give back to them. I think we should be looking at it from that point of view. Does anybody have any comments now or maybe we could take comments over the next week or two, and Toni could put something together for us.

MR. R. WHITE: I guess I'd have a concern commenting on this until I heard from the technical committee and the LCMT. I guess I would like to hear from those two entities.

MR. SIMPSON: I think it's great to have ideas like this come forward from the industry. I think at this point it would be the Mid-Atlantic Council's role to take the next step and look at the idea and develop it and see if it actually can accomplish what the author intended. I think our concern would then be if that is developed and it looks like it has merit and it might be something wise to do with butterfish and Loligo, then we'd want to make sure that there was also an analysis of impacts on the lobster fishery and ample opportunity for public comment from that sector to make sure that any new agreements work for all the fisheries.

CHAIRMAN CULHANE: Thank you, Dave; that sounds reasonable. Anybody else? Toni is kind of giving me her ideas, whispering in my ear, of what perhaps we should request from the council to get our feedback to them. Toni, could you kind of flesh that idea out for us?

MS. KERNS: My question is sort of in response of Dave's comments. Would you like the commission to write back to the Council asking them for a fleshed-out evaluation of whether or not this proposal would meet their needs to reduce butterfish? If that is the case, then we would like the opportunity to look at impacts on the lobster industry as well as solicit comments from the public on those changes in

light of the effects that it may have on the lobster; is that what you're suggesting?

If so, should that letter come from Vince as the commission executive director to the council, and would the board like to see that letter beforehand? Is it that concept and we can go ahead and move forward?

MR. SIMPSON: If that's the concept, really it would be up to the Mid to decide if this is something that they want to commit resources to and develop; and if they go down that track and it looks promising, only then would the lobster piece of this come into play. I think it would be great to have Vince send a letter to the Mid summarizing just exactly what you said, Toni. I don't really see the need for the board to see it; just expedite it.

CHAIRMAN CULHANE: Okay, Vince seems to be in agreement with that. Bill.

MR. ADLER: I think that's fine, but I also would like it to say that there has been an agreement made which seems to be working out there for all parties currently; and, yes, we are concerned, but whatever you put in the letter, I don't need to see it, but I think that would be that little comment that they did have a problem, they worked it out, it seems to work, just be in there.

EXECUTIVE DIRECTOR O'SHEA: Real quick, the big issues that you guys have talked about was it was a hard-fought agreement that is working now, we suggest they go forward and try to take a shot at better documenting what the actual savings would be, and then bring that back to us and put a placemaker in that we think it is important there be a public process if this were to go forward so that the lobstermen would be heard as would the mobile gear guys. That's what I'm taking out of this.

CHAIRMAN CULHANE: Okay, thank you, Vince. Dave, do you have a comment?

MR. SPENCER: Mr. Chairman, if the board takes that route I think one piece of analysis is critical and has this reduced gear conflicts out there? I mean, that was the intent of this. I think it has worked, and I think that documentation is as important as anything else, if not more important. I think that needs to be part of a package if this is the route that the board takes.

MS. SPINAZZOLA: Bonnie Spinazzola, Atlantic Offshore Lobstermen's Association. I would just like

to say that the way these areas are made up, squid boats definitely do go there. However, they go there only when the fish are there very quickly. It could be if the period of time that they're requesting, maybe six months or whatever it might be, they could be there two weeks. When the fish go away, they go away.

Then you have a vacant piece of bottom where traditionally this is where lobster fishermen fish. When they can move into this area, the guys go right back to their traditional fishing grounds all the time, and they stay there the entire time while they're there. You have to understand it's traditional fishing ground.

The other thing is that fish move and squid move or whatever. What happens next year or two years from now or three years from now or whatever when the whole pattern changes again? Will they request another change? Finally, Vince can probably speak to this, the coast guard isn't crazy about all different shaped areas, but they are what they are, and they have been that way for probably 12 or 15 years. I think that if we change a lot of things out there the coast guard might pull their hair out.

They're happy with it; they know what the enforcement is; they know the times; they know the dates. The other big thing is that this, again as David said, was created for gear conflicts. If we start changing times now, the gear conflict -- in Mr. Lackner's letter, there are several different time changes where now there are a few or a couple; we're looking at a bunch of different ones. Well, if we start changing all of those times again, the gear conflicts especially during the time of change are going to be a huge headache. I think that's something for everybody to really think about. Thank you.

CHAIRMAN CULHANE: Thank you, Bonnie. I think we're ready to move on Item Number 8, and Dave Simpson is going to give us an update on the Area 6 V-Notch Program.

### **UPDATE ON THE AREA 6 V-NOTCH PROGRAM**

MR. SIMPSON: Mr. Chairman, that's exactly right. I reported at the spring meeting on progress and this is a final update for the formal program as it was crafted and implemented by the legislature through half a dozen statutes that we have. To remind you, the V-Notch Program began August 1 of 2007 and met that Year One Goal -- actually exceeded it. We

hit 102.7 percent of the target, having notched just over 59,000 legal equivalence.

Year Two was not as productive. We ended up notching about 15.7 percent of the target before the funding was exhausted that the state of Connecticut had provided. Under the backstop provisions of Addendum XI and the V-Notch Program, if less than 50 percent of the target is reached in Year Two, then Area 6 is required to go up on the gauge to 3-3/8 effective January 1, 2010. It is our intention to do that.

Addendum IV also requires that with the 3-3/8 inch carapace length that the vent size also be adjusted to be either 2 inches by 5-3/4 or 2-5/8 circular. My memo indicates we would do that as well on January 1, 2010, but given the number of traps where the vents will have to be changed out and January being a tough time of year to do that sort of thing, I ask the board's indulgence to delay that piece of it only until the start of the fishing year on June 1<sup>st</sup>. I don't know if you need a motion to affect that, but that's our thought.

CHAIRMAN CULHANE: I think Toni is going to look into that. Any discussion while we're waiting? Toni says we will need a motion on that because it is a compliance criteria. Pete, did you have a comment in the meantime.

MR. HIMCHAK: Yes. Mr. Chairman, how many states does this affect in LCMA 6?

CHAIRMAN CULHANE: Two; it affects New York and Connecticut in Long Island Sound.

MR. GILMORE: Mr. Chairman, yes, New York is going to have to increase both our size and our vent size. We're going to have to do that -- I think our vent size we can do by regulation, but the size limit has to be done through legislation, so we're going to have to go through our process of getting it to the commissioner and then to the legislature. We will do that, but we may need some help from the board.

CHAIRMAN CULHANE: Well, I think, then, we do need to get a motion on the table for this.

MR. SIMPSON: Move that the LCMA 6, Long Island Sound, be required to increase the minimum carapace length of lobster by 1/16 inch to 3-3/8 inches effective January 1, 2010 --

CHAIRMAN CULHANE: Dave, hold on a second; that part of it we don't really need a motion for.

What you would need the motion – that’s what you have got to comply with – you need the motion to delay on the vent increase.

MR. SIMPSON: Okay, as long as the record is clear at this meeting that we’re committed to increase the gauge on January 1, 2010, I’m happy. **Then the motion would simply be to implement a minimum escape vent size of 2 inches by 5-3/4 or 2-5/8 inch circular in LMA 6 effective June 1, 2010.**

CHAIRMAN CULHANE: Okay, we have a motion and a second by Pat Augustine. Discussion on the motion. Bill.

MR. ADLER: Okay, if this is in an addendum, can we just vote without an addendum – and please we don’t need any more addendums – can we just vote to delay even it is in an addendum; can we just do that; I hope, maybe?

CHAIRMAN CULHANE: I hope so, too, Bill; we’ll check on that. Vince.

EXECUTIVE DIRECTOR O’SHEA: Mr. Chairman, we tried this before earlier in this board, and the board took issue with it. I’m going to stop what Toni is doing right now. There are words getting put up there for a different motion than what was made by the maker, and I would suggest that you get that straightened out first rather than let staff craft the motion. Thanks.

MR. SIMPSON: Yes, I think I said just simply implement a minimum escape vent size effective June 1, 2010, so the sizes are correct, and it would be effective June 1, 2010 and not January 1. Did I say in LMA 6 or did I lose that when I made my second start? Yes, in LMA 6 implement the escape vent, so just start it with “in LMA 6”.

MR. LAPOINTE: The effect of this, we have a requirement for January 1, 2010, now, don’t we, so I think what staff was trying to do – and I would hope we could perfect the motion – and it would be to move to delay implementation until June 1, 2010, because right now it’s effective January 1, 2010. That’s I think what staff was trying to do.

MR. SIMPSON: That’s fine. I thought the discussion captured that detail, but that’s fine to incorporate that in the motion.

MR. LAPOINTE: Perfect.

CHAIRMAN CULHANE: Okay, discussion on the motion. No discussion, we have a comment in the back.

MR. JOHN GERMAN: My name is John German. I’m an Area 6 fisherman. I’m also President of Long Island Sound Lobstermen’s Association. I would like to see this motion go through because basically most of the changes that we’ve had vent size and gauge size have been on June 1<sup>st</sup> because they figure that’s the start of the fishing year.

The reason we ended up with a January 1<sup>st</sup> date here was because of our conservation equivalency, and in retrospect we probably should have made that June 1<sup>st</sup>, but as it stands and was made it’s January 1<sup>st</sup>. Looking from a safety point of view, I don’t know how many of you people are out on the water January 1<sup>st</sup>, but normally I am through January, and it’s not a pleasant time of year to be there normally.

From a safety point of view, I would hate to see people go out and try to change vents in adverse conditions just to be in compliance with this one when we could just as easily make it June 1<sup>st</sup>. Like I said, the only reason it is January 1<sup>st</sup> is because the conservation equivalency program did not go through as we planned. I think June 1<sup>st</sup> will be a much better date for many reasons. Like I said, traditionally that’s when we changed everything for safety reasons. Thank you very much.

CHAIRMAN CULHANE: Okay, thank you. Are ready to call the question? Does anybody need time to caucus? The motion is move to delay implementation in LMA 6 a minimum escape vent size of 2 by 5/3/4 rectangular and 2-5/8 circular until June 1, 2010. Motion by Mr. Simpson; seconded by Mr. Augustine. All in favor of the motion raise their right hand; opposed; abstentions; null votes. **The motion carries.** We are up to Item 9. We have a presentation by Diane Borggaard.

### **UPDATE ON THE ATLANTIC LARGE WHALE TAKE REDUCTION PLAN**

MS. DIANE BORGGAARD: Thank you, Mr. Chairman. I just wanted to thank the board and the ASMFC for letting us present on the Atlantic Large Whale Take Reduction Plan and give you an update on where we are with our current management effort. We’re here to, of course, increase communication, but also our advisory group – we had some members from Take Reduction Team suggest that we come to this meeting and make sure that we’re able to inform you as to where we are and where we’re going with

regulations to protect large whales as well as some of the data needs that we have.

We will be sending a letter to the states shortly from Pat Kurkul to relay some of these data needs, so we wanted to give you a heads-up and thought this would be a great opportunity and also to answer any questions, so I just wanted say thank you. So, just a brief overview for folks who aren't familiar with Atlantic Large Whale Take Reduction Plan, it is developed by NMFS in accordance with the Marine Mammal Protection Act and Endangered Species Act.

It is designed to protect three endangered species from risk of entanglement in commercial fishing gear. We're looking at right whale, humpback and fin whales. We have an advisory group which we call our Atlantic Large Whale Take Reduction Team. This is well represented by our states. We have every state represented along the Atlantic Coast from Maine through Florida, and ASMFC also holds a seat on this team.

We rely on this team to give us advice on how to meet our goals under the Marine Mammal Protection Act and Endangered Species Act. This is a wide-reaching plan. It extends from Maine through Florida out to the EEZ, although we do have some inshore areas that are exempt. The fisheries that we look at are American Lobster Trap, but also other trap pot fisheries which are newly regulated under this plan, including hagfish and Jonah Crab, just to name a few.

A number of gill net fisheries are also impacted by these regulations. This is just a sample of some of the requirements fishermen have to abide by. They include mandatory gear modifications such as sinking ground line, weak links on buoy line and net panels. We also have some area closures with limited exemptions such as in Cape Cod Bay and the Great South Channel in the northeast and down off of Florida and Georgia as well.

We have extensive gear marking requirements as well on the buoy line and at the surface buoy. These are just some overriding principles that are driving these regulations we thought it would be helpful for you to know about. It is important to know that these were agreed by consensus by our advisory group of about 60 members, so a large group.

One was to reduce risk associated with vertical lines; and the other, reduce profile of all ground lines. You can see in these diagrams the particular parts of the gear that we're trying to focus on to reduce large

whale entanglement. The discussions with our advisory group to date has focused on ground lines and how to reduce profile of those ground lines; mostly through sinking line, which is now required, but we had also had previous discussions about an alternative to that, which in the end the agency wasn't able to implement.

So, just to let you know, these regulations have a lot of history. They've been around since 1997 and have been updated many times through years as the agency still tries to achieve its goals under the Marine Mammal Protection Act and ESA. The most major changes occurred in 2007, and these included regulating additional fisheries as well as implementing broad-based gear modifications.

For those who are familiar with these regulations, you probably know the sinking ground line requirements have definitely been a large requirement for many trap pot fisheries along the east coast. Our recent regulations did impose some vertical line regulations. We acknowledge that we need to do more, but additional discussions with our advisory group were needed and additional information was needed. We will talk about that and perhaps some ways the states can help us.

Since 2005 the agency has been working on building a vertical line analysis model to help us get at that question and help us figure out how to reduce risk associated with vertical lines. Initially we've been focusing in the northeast or north of 40, and we're looking at all fisheries subject to the plan.

We've been building the model working with our states and also working with our federal data to look at information from 2000-2007. We're also putting into the model whale data, looking at our NMFS Aerial Surveys and also sightings data base that is housed in Rhode Island. We have been providing updates to our Take Reduction Team over the last few years about this model. This model responds to a need for an analytical tool to support our vertical line strategy, and we want to work with our Take Reduction Team every step of the way to help us answer the fundamental questions of where do these fisheries operate, where are concentrations of vertical lines greatest, and do whales frequent these area of high concentrations of vertical line?

Our hope is to produce co-occurrence indicators and overlap whale distribution and fishing distribution to find our high-risk areas to better design management. This would be in lieu of possibly a broad-based approach where we could hopefully really focus in

our management on hot spots that NMFS and our team determines are warranted.

Some things we're looking for are number of active vessels, and we've been looking at our VTR data for that, as well as our permit data bases, and also state data where available. We've been working currently with states from Maine through New Jersey. We're also looking at a number of questions and looking for information on the actual vertical line itself.

We're doing a model vessel approach where we're looking at areas along the coast. We're building different models depending on the area. Some of the sources for those model vessels are our observer program, of course, state reports. In the absence of any information we are looking at profession judgment both from state experts and NMFS gear specialists.

We're also looking at whale-sighting effort and its co-occurrence of whales and vertical line, which we will be giving an index score. The next slide just demonstrates what ultimately we will be using to design vertical line management. This just shows an example of co-occurrence between fixed gear fisheries and whales, and this is just an example month.

This will again help us hopefully focus on those areas where risk is greater, and then we'll work with our Take Reduction Team to see what are the appropriate management measures in those areas. The next steps are to expand the model. We want to expand the model into the Mid-Atlantic and Southeast. We will be, of course, looking to our states to help us with that.

We want to include additional gear modification information into that and actually maybe even look at impacts of area closures. We're looking at not only sightings' information but also seeing if we can build into the model information about where whales are feeding and other behavioral information that may affect risk.

Ultimately we want to develop comprehensive risk indicators that look at different gear configurations and integrate this information to look at entanglement risks. The next slide shows some of the data needs for the state and federal waters. Some of the information we are looking for are active vessels by fishery and month and where these vessels are fishing.

Again, our greatest area of interest right now is south of 40 degrees where we will be looking at our Southeast Logbook Program information down at our Southeast Science Center and also looking to states from Delaware to Florida to help us obtain information to input into the model. Some of the needs – we won't go into all these, of course – we'll be sending a letter shortly to all the states that will give the actual information that we're looking for to build the model, but this just gives a sample of some of that information for trap pot fisheries and for gill net fisheries.

The last slide is just to tell you where we're going from here. The agency did talk to the Take Reduction Team in April about what our timeframe is for regulatory action. Of course, we've just put in a broad-based ground line rule effective this year for trap pot fisheries. Now, of course, we're turning to vertical line. We expect a rule to be final in 2014.

We've got this year through 2014 to compile information for the model to work with our Take Reduction Teams on options for high-risk areas and the appropriate way to manage and get input on that. Again, we plan to work extensively with our Take Reduction Team. We want to frontload the information and really look into socio and economic impacts of any of the measures, as well as biological impacts on the early end.

We anticipate needing to incorporate new data, so we're looking to states to, of course, try to obtain information that you have now, but also encouraging states to think ahead to see how we can continue to get that information to fold into the model. We will need not just baseline information; but once the regulation is in place, we'll need to monitor that over time.

Some states like Maine and Massachusetts, for instance, have already either changed their logbook information or are thinking about changing logbooks to better incorporate vertical lines to help management. Some things we're here to brainstorm with states on or if there is any way we can help states think about possible options, we're definitely available.

Of course, there are significant benefits to relying on a centralized source for commercial fishing data. We've been coordinating with ACCSP and the ACCSP Bycatch Committee and talking about the model and what our needs are to see if there is a way long term to help facilitate getting this information. It's really important, of course, to communicate and

coordinate with states, and that's one reason why we're here and we really appreciate this opportunity.

Again, a letter will be coming out shortly to all the state directors from Pat Kurkul. That information will explain pretty much what I've just explained here where we're going with the whale plan regulations, our needs for vertical line and asking for help from states for information to input into our model and also looking at possible ways to obtain that kind of information long term. Again, thank you for the opportunity. If you have any questions, I'd be happy to answer them.

CHAIRMAN CULHANE: Any questions for Diane? Thank you, Diane, for that presentation. I'm sure the board probably needs time to digest it all and they can communicate with you by other means. Thank you. Moving on to other business, we had two items added at the beginning of the meeting. The first request we had was from Pat White.

### **OTHER BUSINESS**

MR. P. WHITE: Well, it appears this is unusual because we're usually spending an awful lot of time developing rules that NMFS comes up with later. Currently with the final rule that came out from NMFS, it appears that we've got a situation in the Outer Cape where NMFS has come out with regulations that are contrary to what the state of Massachusetts is doing. I think we need to look at that to see how we might be able to help the state of Massachusetts have a more seamless transition in the rules that have come out.

CHAIRMAN CULHANE: Pat, Toni will explain the differences in the rule.

MS. KERNS: I think it's in the last two weeks that final rule came out from the National Marine Fisheries Service, and for the Outer Cape Cod it implements a maximum size. Currently the Outer Cape Cod does not have a maximum size at all. The one implemented by the National Marine Fisheries Service is 5-1/4 inches – no, I'm sorry, it follows Area 3, which this year is at 6-7/8, and then next year it will drop down to 6-3/4.

It also changes the v-notch definition. Currently Outer Cape Cod is the only area that has the 1/4 of an inch v-notch definition, which also does not include any setal hair language; whereas, all the other areas have moved to either zero tolerance or the 1/8 of an inch, including the setal hair language, which is a

more conservative v-definition language. Those are the two differences for the Outer Cape Cod.

MR. McKIERNAN: Just to put this in perspective, there are about 70 Outer Cape fishermen and a third of them have federal permits, but they fish about half the traps. If no action was taken either by this board or by the state, we would have about 30 or 35 guys who would have a more liberal regulatory regime for those two biological measures.

I'm already hearing some noise coming from the fleet pro and con, and at the state we haven't had a chance to really discuss this yet because it is so new. It's interesting that Pat should raise it because obviously it does create a loophole that you could drive a 42-foot duffy through..

MR. AUGUSTINE: Mr. Chairman, has our enforcement had an opportunity to look at this change, and have they had an opportunity to meet or discuss it, or is this still too new?

COLONEL JOE FESSENDEN: No, we haven't

MR. P. WHITE: Just a question, Mr. Chairman; if this is something we needed to do, we would have to do through an addendum or how does this work?

CHAIRMAN CULHANE: Toni is shaking her head yes, so an addendum.

MR. ADLER: All right, a couple of things. First of all, we basically were opposed to this federal thing not because of what it was but the process that was used to get there. We had opposed it because what the Atlantic States does is call in LCMTs to discuss an issue before it proceeds, and we have done that and it works. This was not done that way.

This is not part of any Atlantic States Plan and the process was violated. It would really be something if the other side violated a process, but this is what happened. Basically, we were opposed to it because of that reason and not necessarily what was being proposed so much. Another thing is I don't know whether it would need an addendum or not.

I know a state can be more restrictive if it wants to be than the addendum. This, by the way, was not in any addendum. I did ask what they were going to give back to the Outer Cape. They took what they took to get where they've gotten, and they got it. They got to the level they needed to be with the overfishing, whatever. They just did it a different way. Now, being not overfished, they are asked to do more. My

questions was so what are you going to give them back? But, anyway, those are my comments.

MR. MEARS: Mr. Chairman, yes, this was discussed at the last board meeting. For background information, this has to do with the final rule that was published on July 28<sup>th</sup>, and it's the same one that accompanied the requirement for mandatory dealer reporting that will become effective in January of 2010. There are copies on the back table if anyone wants a copy of the summary of the changes. Thank you.

MR. LAPOINTE: I'm confused, Mr. Chairman. If it didn't come from the LCMT; was it just generated by NMFS with no input, Harry?

MR. MEARS: As indicated, this proposed rule earlier was discussed at the last board meeting. It concerned a series of management measures including the definition of a v-notched lobster, the implementation or modification of maximum carapace length and also required dealer reporting. The one point in question concerns the mandatory maximum carapace length in the Outer Cape.

It was looked upon as a management measure that was proposed in an area where lobsters are transient to other management areas, so it was looked upon as a proposed, necessary and warranted measure to give integrity to that management measure in other areas and also to enhance the enforceability of that particular management regulation.

So, no, it was not done in isolation; it was done in communication with this board. It was done with full public comment at the proposed rule stage and all public comments were taken into consideration. Overall I don't look at it as yet a disconnect between state/federal management measures, but it in fact is a management measure that will give integrity to the overall package of lobster regulations. Hopefully, one of the results will be not what do you give back but it will in the future contribute to the sustainability of the resource. Thank you.

MR. ADLER: Mr. Chairman, it did come back to the board. The federal procedures were as the federal procedures must be. That was all final and fine, but George's question I thought was did it go to the LCMTs before it was formulated. The answer to that was no. The feds did their proper process, but the LCMT issue was the process. I'm also not arguing necessarily with the idea here, but the process. Thank you.

MR. P. WHITE: Well, I just wanted an indication from the board, I guess. If they feel this is important at this time, I would try and work out a motion, but how does everybody feel about it?

MR. LAPOINTE: I'm talking to my colleague over here, but it strikes me that having inconsistencies, state and federal, in one management area buggers up the enforcement and creates two classes of fishermen, so it doesn't make sense to me from that perspective.

REPRESENTATIVE SARAH K. PEAKE: I understand the concerns about enforcement; however, these are all permitted fishermen. We're not talking about a large number of fishermen who hold the state permits in the Outer Cape Lobster Management Area, but we are talking about a group who got together, still work together, developed their rules and have a sustainable fishery there, and the numbers are where we want to see them. I think that for the sake of consistency of enforcement to turn our backs on the good job that the fishermen in the Outer Cape has been doing in managing their resource would be unfortunate.

COLONEL FESSENDEN: Following up on Pat Augustine's comment about law enforcement looking at it, I would like to maybe take this back to the Law Enforcement Committee and report probably at the winter meeting on this issue. It is an enforcement issue. We've commented before on it and I think it's a good comment, good idea.

CHAIRMAN CULHANE: Anyone else on this issue? Pat.

MR. AUGUSTINE: Well, if we do have to take action – in other words, a done deal and we're inconsistent, it's going to put our law enforcement people in a real bind come whenever the effective data is, sometime in January – it only gives us now to the fall meeting in order to make a decision to take corrective action to create an addendum or a amendment. Do I miss the point or are we just going to drag our feet on this one? I'm sorry, July, well, okay, so we can put this off until later in the year or the first part of next year.

MR. McKIERNAN: The Commonwealth of Massachusetts could do this through our own regulatory process. It hasn't gone to our commission yet; it hasn't gone to public hearing. It is doable; so if it was the desire of the Commonwealth to get this in a quicker time period, we could do it. I'm sure the hearings themselves will be rather lively.



CHAIRMAN CULHANE: Well, that thought had gone through my mind, too, that we could save ourselves of going through the whole addendum process if the Commonwealth was willing to do this through a regulation change. I guess if that ran into an impasse and it couldn't happen, then it might require the board to take another look at it.

From my point of view, I think that would be the preferred way to go at this point. You know, we're doing this under other business right now, so I think maybe we'll leave it at that and then see if there is any action required on this in the future. We do have another item under item under other business. This is on the Jonah Crab Fishery.

MR. McKIERNAN: It has come to our attention that the catch of Cancer crabs, Jonah and rocks, in the Gulf of Maine and in Southern New England has the potential to undermine the effort control aspects of our lobster trap fisheries, and that's because in areas like Area 3 and Area 2 where traps are quite limiting in their allocations, the response by some fishermen has been to set extra traps as, quote, unquote, Jonah Crab Traps.

Now, the National Marine Fisheries Service has been very clear that is not legal for a federal permit holder to set non-conforming traps. In other words, the traps that a federally permitted fisherman fishes have to comply with all federal regulations. In Massachusetts and in Maine our rules force crab trap fishermen to fall under all the lobster rules, which means only the lobstermen can be crab trapping, so it works well there.

That's the point of this discussion that I want to bring up today. I think that is what is needed on a regional basis. I think the trap fisheries for these species needs to fall under lobster plan or at least be controlled through the lobster effort control plans; because if not, you've got a serious leak in your effort control because the traps are indistinguishable.

Furthermore, Diane just finished talking about her large whale plan, and I think it would boggle the mind of the conservationists to think that there is going to be a brand new fishery on top of all the fixed gear fisheries that we have in these areas for a new species. I would ask that the Policy Board discuss, before the end of this four-day meeting, the potential for ASMFC to take on a Cancer Crab Fishery; that is, the Jonah and Rock Crabs, as an interstate plan.

This plan would have one principle and that is trapping for Jonah or Rock Crabs would only be legal

if the traps were fully authorized by the Lobster Plan, which means that if someone has an allocation, for instance, in Area 3, they can set Jonah Crab Traps, but it has to be within the trap limit that they have been allocated. I think that is critical to prevent a proliferation of gear.

If we don't do this, these gears are just so close together, they're indistinguishable; and even if small modification were made to the gear to prevent lobsters from being caught, that is easily circumventable, and I think it's going to be a very difficult situation if we allow this fishery to proliferate. That's my request, that the Policy Board consider before Thursday the adoption or the commencement of a new plan for this species.

MR. P. WHITE: Question, Dan; you seemed to have a two-part question here on that. One of the ones I hear is that we should encourage or create Lobster/Crab Licenses that we have in Maine and Massachusetts for our entire management process. But then are you also asking that we begin to get involved in a management process specifically for the crabs outside of the Lobster Fishery?

MR. McKIERNAN: I think that could come as a second step down the road, but I think the immediate need is to prevent the proliferation of crab traps in the EEZ and in state waters because, again, I think it's one of these loopholes that I think needs to be closed. Certainly, any species plan would affect the take of those species by any and all gears, but the one that I'm focusing right now is on trapping.

EXECUTIVE DIRECTOR O'SHEA: I had a question, Mr. Chairman, for some of the board members it might be helpful to know what the rough estimated split is between the state landings in this fishery and the federal landings. Does anybody have an idea of what that is?

CHAIRMAN CULHANE: I don't see any volunteers. Doug.

MR. GROUT: Dan, given that the three northern states all have a license that says it's required to land lobsters and crabs, this is really an EEZ issue, but you also mentioned Area 2? Is it just Area 2 out in the EEZ?

MR. McKIERNAN: That I'm not sure, but I know that there is a substantial bycatch of Jonah Crabs in the Lobster Fishery in Southern New England. Obviously, it needs to be addressed down there. I wasn't aware that New Hampshire had that same

language that we and Maine have, so that's good news, but I think that's where it does need to be enacted.

Just as an aside, I got a call this week from a valid Area 3 permit holder who told me that he was going to move his Area 3 trap allocation onto a new boat, and then he would just set all of these Jonah Crab Traps with his existing boat, and there is nothing that I could do to stop that. Of course, I told him that under the state law, he wouldn't be eligible to obtain a landing permit because we have a moratorium on the landing permits for taking lobsters or crabs with traps. That is the kind of adaptation that the industry is about to do if we don't take that kind of an action.

MR. P. WHITE: Well, I don't know where we go with this. I think we ought to do something sooner than later, and maybe everybody ought to bring what information they can to the annual meeting and we'll begin whatever process we need to extend these rules throughout the range of the resource.

MR. R. WHITE: An important piece of information for me will be state landings. You know, is this a species that is found in state waters and is there a fishery prosecuted in state waters or is this mostly all or completely a federal waters species? That will be a big part of my information.

MR. ADLER: It is sort of a fishery. It's a bycatch fishery because the crabs get into the lobster traps. As long as you're properly licensed in the state, you can land them. We do have small closed time in the winter or something when they're molting or something. You are allowed to bring them in; and anyone with the proper license can do so.

If you have a trap limit like we have in Area 1, 800, well, that's it, 800. You can't put 850 or whatever. Any of the states or any of the areas that have historical participation and trap limits like 3, Outer Cape, 2, the idea is that if your allocation is, let's say, 400 traps, that's what you're allocated. Then everybody thinks you're going to have 400 traps out there.

But, particularly in the federal waters, you could have a crab trap, which is different from a lobster but it isn't, and so you actually have 600 or 800 traps out there but only – that's the problem, but there is a fishery. It's not a big one.

MR. R. WHITE: Well, I guess I just have a concern that if this is a species that's mostly in federal waters, that we start limiting traps in a fishery on this species,

and there is no management plan, there is no stock assessment, how do we make those kinds of determinations? I think there are a lot of questions here that concern me.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, I'm just going to read something, if I could. This is from the Charter and it says, "Upon determining that a need exists in a fishery for the development of a fishery management plan or amendment, the Policy Board shall establish a management board for that fishery."

So, I think the issue here that you're wrestling is in one sense the impact of expansion of the Jonah Crab Fishery, the impacts of that on the Lobster Fishery is sort of the rationales that I've heard here today. But if you were to refer this to the Policy Board, I think that before it was taken up at the Policy Board you'd want to be able to articulate that a need exists in a fishery. This doesn't which fishery. The dilemma that you have is the fishery that is not regulated by ASMFC or the federal government has the potential to impact a fishery that you are responsible for managing.

MR. McKIERNAN: And I guess the problem as I see it is that you describe it as a fishery, but in fact it's probably 95 percent or maybe 99 percent lobster trap bycatch. If you can come up with another clever and rational and defensible way to accomplish the folding in of this activity into what appears to be now a predominantly lobster bycatch fishery, then that would be great. I'm only proposing this idea to get this started because I think if we wait three months, six months, nine months, then we're going to have a lot of people on our doorstep saying, "Well, wait a minute, I'm all invested and you didn't tell me I couldn't do this."

MS. KERNS: In terms of getting back to the board at the next meeting with state landings versus federal landings, I can request that information from the states and then get that for those that do collect. For federal waters if the landings come in on anything but a multispecies permit, then they won't be required to be recorded and so it will be incomplete information coming from there. Just lobster trap fishermen are not required to report.

COLONEL FESSENDEN: I was just going to say that any boat that is transporting traps that are capable of catching lobsters are required to have tags in them. That's how we enforce it, and I think the feds do the same thing. Actually, Area 3, I think you'll find in the summertime and especially in Area

3 Downeast Maine, down off our state, it's quite a large fishery.

A lot of boats from New Hampshire go down there and fish crabs. I think you'll find your landings in New Hampshire are pretty significant on Jonah Crab. But I think the way we enforce it, I'm pretty sure if that trap can catch lobsters, it has to have a valid tag in the trap. This person who called you, Dan, I think law enforcement would have some issues with that person.

CHAIRMAN CULHANE: I don't see any more hands up at the table. David Spencer had his hand up.

MR. SPENCER: I just wanted to add my voice as to why I think it's appropriate for this board to look into this issue. I don't know how many years it has been that this board has expended a lot of time, energy and many addendums into effort control and limited access programs now in every single management area. You have a tight control on traps and actually reduced in some places.

To allow an unregulated fishery to fish in the same area with gear capable of catching lobsters I think has the potential to undermine everything this board has worked for. I think to me that in itself is enough justification for this board to start the process of, first, capping the effort. Don't let it get out of control because it will be harder to bring back. Then if need be, get into a management plan. I think this is a serious issue that I think the board needs to address.

CHAIRMAN CULHANE: I'm a little confused here, too, now. I'm not sure where we go with this. I think to go to the Policy Board we need to have a motion from the Lobster Board to the Policy Board.

MR. LAPOINTE: Why don't we just put it on the Policy Board Agenda under Other Business? It will give us a couple of days to reflect.

CHAIRMAN CULHANE: And can we do that without a motion?

MR. LAPOINTE: We can. If we wanted to do a plan, I don't think we could, but I don't think we're ready for that. If it gives us time to think about how to move forward, gathering information, having staff put together an issues paper for consideration at the annual meeting, it strikes me that's a logical course of action, and it gives us time to think about what the substance and the nuance would be.

CHAIRMAN CULHANE: Okay, thank you, George. Is there agreement on that? Vince.

EXECUTIVE DIRECTOR O'SHEA: Maybe the other thing to suggest – I think that is a good idea – is some sort of sense of a working problem statement; not that you would necessarily adopt that at the Policy Board. I think if folks could work on that before it's raised at the Policy Board, it would give the other members of the Policy Board a better sense of what you're trying to do here. Thanks.

MR. McKIERNAN: I would be happy to draft that and send it to Toni.

CHAIRMAN CULHANE: Thank you, Dan.

MR. GROUT: Could we take up the offer of the Law Enforcement Committee to review the issue, also, with comments for the annual meeting?

## ADJOURNMENT

CHAIRMAN CULHANE: I see a lot of shaking heads on that, so, fine. Okay, is that enough on this issue? I think we have a plan. The last thing on the agenda is adjournment. This meeting is adjourned. Thank you.

(Whereupon, the meeting was adjourned at 5:32 o'clock p.m., August 17, 2009.)

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