

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

**Atlantic Sands Hotel  
Rehoboth Beach, Delaware  
October 21, 2008**

Approved February 2009

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## INDEX OF MOTIONS

1. **Approval of Agenda by consent** (Page 1).
2. **Approval of Proceedings of August 19, 2008** by Consent (Page 1).
3. **Move that this board approve Addendum XII for further public comment, with an understanding that it will be considered for final action at a future board meeting.** Motion by Mark Gibson; second by Rep. Dennis Abbott (Page 7). Motion carried (Page 7).
4. **Motion to establish October 21, 2008, as a control date that may be used to affect future participation in the Area 1 Trap Fishery in the EEZ** (Page 10). Motion made by Dan McKiernan; second by Pat White. Motion withdrawn on (Page 12).
5. **Motion to initiate an addendum that includes; a, options for a limited entry program for LCMA 1; and b, a control date of 21 October 2008 that may be used to affect future participation in the Area 1 Trap Fishery in the EEZ** (Page 14). Motion by George Lapointe; second by Bill Adler.

**ABOVE MOTION REWORDED ON PAGE 14:** Move to initiate an addendum that includes options for a limited entry program for LCMA 1 and request publication of a control date that may be used to affect future participation in the Area 1 Trap Fishery in the EEZ. Motion carried on Page 14.

## ATTENDANCE

### Board Members

George Lapointe, ME (AA)	Sen. George Gunther, CT (LA)
Terry Stockwell, ME, Adm. Proxy	James Gilmore, NY (AA)
Pat White, ME (GA)	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)	Roy Miller, DE, proxy for P. Emory (AA)
William Adler, MA (GA)	Tom O'Connell, MD (AA)
Dan McKiernan, MA, proxy for P. Diodati (AA)	Fentress Munden, NC, proxy for L. Daniel (AA)
Vito Calomo, MA, proxy for Rep. Verga (LA)	Bill Cole, NC (GA)
Mark Gibson, RI (AA)	Mike Johnson, NC, proxy for Rep. Wainwright (LA)
Everett Petronio, Jr., RI (GA)	Harry Mears, NMFS
Mark Alexander, CT, proxy for D. Simpson (AA)	
Fred Frillici, CT, proxy for Dr. L. Stewart, CT (GA)	

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

### Ex-Officio Members

Joe Fessenden, Law Enforcement Committee

### Staff

Vince O'Shea  
Robert Beal

Toni Kerns  
Nichola Meserve

### Guests

David Spencer, AOLA  
Bonnie Spinnazzola, AOLA  
Janice Plante, Commercial Fisheries News  
Bryan D. King, DDOE, Washington, DC  
Tom McCloy, NJ DFW

Chip Lynch, NOAA  
Geoff White, ACCSP  
Julie Defilippi, ACCSP  
Bob Ross, NMFS - NE  
Chris Hayes, ACCSP

The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Swan Ballroom of the Atlantic Sands Hotel, Rehoboth Beach, Delaware, October 21, 2008, and was called to order at 3:05 o'clock p.m. by Chairman Brian Culhane.

## **CALL TO ORDER**

CHAIRMAN BRIAN CULHANE: Good afternoon. I'd like to call the American Lobster Board Meeting to order.

## **APPROVAL OF AGENDA**

CHAIRMAN BRIAN CULHANE: The first item on the agenda is the approval of the agenda. We have several additions to the agenda that have just been made so you don't have them in front of you. Under public comment we're going to get an update from the executive director on the Rhode Island court case.

Under other business we'll get an update from NOAA on their proposed rule. Harry, I guess you'll be handling that. One more item that we have is I've received a letter today from Lance Stewart. Lance couldn't be here today, but he asked for an item for board consideration. I've had copies made of that letter and they will be passed out. Doc, would you like to bring that up during other business? Okay, so that will also come up under other business.

With those changes, does anybody else have anything else they'd like to add to the agenda? Seeing none, we'll consider the agenda approved as amended.

## **APPROVAL OF PROCEEDINGS**

The next item on the agenda is the approval of the proceedings from the August 19<sup>th</sup> meeting. Does anybody have any changes? Okay, seeing none, we have a motion to accept. We will consider the minutes approved.

## **PUBLIC COMMENT**

Does anybody from the audience have any public comment for any items that are not on the agenda? Seeing none, we'll move along and we will wait for Vince. Vince can give us the update later. Now we're ready for a stock assessment update. Bob.

## **STOCK ASSESSMENT UPDATE**

MR. ROBERT E. BEAL: You all should have the new timeline or a proposed new timeline for the stock

assessment. At the last meeting I provided an update on the status of the stock assessment and let you know that it wasn't going to be completed by the February date as the board had initially scheduled due to some complexities with the model and complexities of pulling the data together.

At that time we said we'd bring you back a new proposed schedule at this meeting, so that's what we're doing now. We've been talking to the stock assessment subcommittee and the technical committee, and it looks the bottom line of this proposed timeline would be May of 2009.

That would be when the peer review results are presented to the management board, which requires the completion of all the stock assessment work by March in order to have a peer review in April. Between now and that March deadline for the stock assessment to be completed – actually, February – is a fairly heavy lift for the stock assessment subcommittee. I know in particular there are four or five states that have folks on the stock assessment subcommittee that will all need to be fully engaged.

Dr. Genny Nesslage is doing a lot of the work with the stock assessment subcommittee, and she will probably be distributing tasks and asking for help throughout the process. In maintain a May timeline to get this document presented to the management board it is going to take the commitment from the states that have members on the stock assessment subcommittee, having them committed and their time available to help out with this stock assessment.

That's the caveat of this timeline. It can be done by May but it is going to take some time committals by the states for their stock assessment folks. That's my update, Mr. Chairman. I can answer questions if there are any.

CHAIRMAN CULHANE: Thank you, Bob. Does anybody have any questions? Mark Gibson.

MR. MARK GIBSON: I don't have questions, Mr. Chairman, but I would echo Bob's thoughts. This is a very ambitious timeline for a very piece of work. I would urge all the board members with an interest in lobsters that have people working on the stock assessment subcommittee as well as the technical committee that's funneling them information, to pay attention to what they're doing, pay attention to what the commission's needs are.

This is not going to get done unless all those people keep their nose to the grindstone. It has been very difficult in the past to stay on target and on time with lobster assessments. This is going to be different with the unveiling of the state-of-the-art catch-at-size

model. It's going to have to be reviewed in its application to all the stock areas, comparison to the old catch survey model, I guess it's called.

It's a very difficult time with loss of staff and so on. This is a high-value fishery and a lot of things are going on in it from north to south between declining landings in Maine, lack of recovery in the Southern New England and Long Island Sound areas. This really needs to get done and good people need to keep working on it. That's my pitch to this board.

MS. TONI KERNS: And for a reminder to the board, those states and agencies that have people on the stock assessment committee are Maine, NOAA Fisheries, New York, Connecticut and the Commonwealth of Massachusetts. Those will be the folks that will be doing all of that heavy lifting during the holiday time period.

MR. WILLIAM A. ADLER: Mr. Chairman, I just want to go back to Bob for a minute. Based on this stock assessment thing, the bottom line here is that at the summer meeting of the ASMFC, which is usually in August, is when this report will actually be presented as a final version; am I correct?

MR. BEAL: Actually it will be at the May meeting, what we usually call our spring meeting.

MR. ADLER: Okay, because it says "assessment and peer review presentation to board at summer meeting week".

MR. BEAL: That's not correct; that should read "spring meeting, May 2009".

## **DRAFT ADDENDUM XII**

CHAIRMAN CULHANE: Anyone else? Okay, moving on to the next agenda item, we have to consider approval of Draft Addendum XII.

MS. KERNS: Thank you, Mr. Chairman. At the last board meeting we reviewed Addendum XII, and the board was also presented with some new concepts for the Trap Transfer Program. The board asked the ITT Committee to review those new concepts that were presented to the board and come back to the board with recommendations for a document to either be approved here at this meeting or to go back out for public comments if there were significant changes to the document from what was presented at the first round of public comment.

Today I'm going to go through some of the changes that are in the document. The document was on the CD and the changes that the ITT Committee made are in bold and underlined and bracketed if you would like to follow along. There are also additional copies on the back table. Staff is currently passing out a memo that the ITT Committee also put together regarding these changes.

The first change in the document is looking at the initial qualification. Previously we had stated, which we still are stating, that the history with dual permits and somebody splits their permit, the history will always follow the federal permit. We added an addition to this in saying that the exception to that rule would be if an individual with a dual permit were to surrender their federal permit, then the history could be transferred to the state permit.

The next change that we made to the document – and this is the significant change that is different than that what was presented to the public – was regarding trap migration for qualification and transfers. Originally we had stated that individuals would be able to transfer their traps between the states, within state waters, so an individual from Massachusetts could sell traps to an individual in Rhode Island.

The ITT Committee reviewed this and upon reflection thought it would be better for states to not allow transfer between the states, and this is to help those states with rules regarding marine mammals and effort numbers within state waters. So similar to the reasons why the National Marine Fisheries Service did not want to see traps migrating to federal waters, other states don't want to see new trips migrating to their state waters.

What this means is an individual could only transfer a state-only to somebody within their state, so a Rhode Island fisherman could sell to another Rhode Island state-only fisherman; or, I, a Rhode Island dual permit holder could only sell to another Rhode Island dual permit holder. The only time that you would be able to transfer traps between states is if you were a federal-only fisherman so all of your traps were being fished in federal waters only.

Regarding the most restrictive rule, the committee reviewed the most restrictive rule as it's written and is recommending that the board adopt Option B, which is the Amendment 3 Rule regarding most restrictive, and that is the rule that NOAA Fisheries currently has in place. This is the more restrictive of the two rules. This is the best practice to move forward with because it's currently the practice that

most fishermen are under right now because most dual or multi-LCMA fishermen have a federal permit so therefore they have to follow the rules under the National Marine Fisheries Service regulations, and all states with a memorandum of understanding also apply those rules for their federal fishermen.

The committee feels that this will be administratively a smoother option, and enforcement also has always said that for traps having the simplest trap tag configurations is an easier enforcement than having multiple trap tag configurations.

Looking at the trap tax, the committee recommended delaying a conservation tax on any transfer until all agencies have allocated and begun transfer programs, so this would on those partial and full businesses. Not all of the committee members agreed with this one issue. One of the committee members wanted to see a transfer tax on full business sales because that individual has already been taxing fishermen in Outer Cape Cod as well as Area 2 on full business sales due to the regulations of Addendum IX, which gave a 10 percent tax, and so it would be difficult for the Commonwealth to undo those taxes that had already been on the full business sales.

Under trap transfers, a new concept was brought forward which did not go out for public comment. This is something that the committee has talked about and the board has talked about, that the traps would not be leased. You have to buy and sell traps; you could not lease them.

The committee has recommended that regarding issues with Area 1, that the preferred option be Option C, so not to go with Option A or B. Fishermen would no longer fish traps in Area 1 once a transfer of an allocation has been made, and this will help reduce the number of migrations that could potentially move into Area 1 for those federal permit holders.

As a reminder, for the database this monstrous program we would definitely need a database to move forward as the ITT Committee has recommended. It would be about two years to fully implement the database. This would be mutual that we would put together with the ACCSP. All states would participate in the database in the sense that they would give us their permit holders and their initial allocations for their traps.

For areas that don't have transfer programs that would be where their participation would end in the database, that we would at least populate the

database with all permit holders at the beginning. Once an area has put in a trap allocation program, then we would use the database to catalog those allocations and transfers that occur and agencies would be able to use the database to see who has how much of an allocation before accepting a sale of a trap allocation.

The commission has applied for funding from ACCSP in the amount of \$156,390. It went through the steering committee and now will be looked at by the operations committee tomorrow afternoon to find out whether or not we will be approved for that funding or not. The committee will also need to apply for funding again in the Year 2010 for additional funding for implementation and troubleshooting once the database has been put forward.

Under the state compliance section, additional information that we would need to collect is a report for all data to the commission and the National Marine Fisheries Service for permits and allocation information and then summaries of fishery performance. Lastly, each agency would need to send a letter to all their permit holders telling them of their permit classification, so letting them know if we consider them a state-only license holder, a dual license holder or a federal-only license holder.

In the memo that we received at the last board meeting from the Commonwealth of Massachusetts a new concept was brought forward regarding how fishing history and catch history are related in that if ever the board were to move forward with transferable quotas, that these histories would need to be connected somehow and known how the catch history has transferred with a trap allocation.

The committee agrees that this is an important issue that needs to be explored, and they want to continue to explore it but believed that this addendum can move forward until after they've considered it for a longer period of time. The committee also recognizes that the addendum as it's presented is not as flexible in the fishery it was originally intended and as industry would have liked to have seen as well as the AP.

The committee is recommending that the board revisit several issues once transfers have occurred so that states can consider whether or not they want to open up the transfer program depending on how management is moving forward with transfers; are there a lot of transfers occurring or are there not very

many transfers occurring because the program isn't flexible enough?

Those include the concept of only allowing within-state transfers, only allowing one single LCMA to be transferred when it's a multi-area trap originally, so allowing that multi-area trap to again be a multi-area trap once transferred, and then also looking at the most restrictive rule and whether or not we should consider revisiting and making it less restrictive.

The ITT Committee recommends that the board send this document back out for public comment for a 30-day period, review that comment at the 2009 winter meeting and then take final action on the document in 2009. Again, we're recommending this go out for public comment again because there was a significant change from what the document originally was presented to the public, the first round of public meetings with the change in within state-only transfers. That is my presentation. Does anybody have any questions?

REPRESENTATIVE DENNIS ABBOTT: You say review the comments at the winter meeting and also take final action at the winter meeting?

MS. KERNS: Yes.

MR. GROUT: Just a question, Toni, about the state compliance reports; there were a lot of things that you're adding into the state compliance reports. Does this apply to Area 1 beyond providing a list of people who are permitted?

MS. KERNS: I think it's the intent of the committee for the compliance to be for those that are participating in transfer programs beyond the list of permit holders and their allocations for the initial populating of the database.

CHAIRMAN CULHANE: Any other questions for Toni? Bill Adler.

MR. ADLER: Toni, the last part of your presentation there you mentioned the revisiting and the flexibility to adjust whatever – let's say Addendum XII gets approved after, let's say, you check out any glitches and we finally get it doing; is it written anywhere or is that just the observation of something that could happen that the flexibility to change some of these things if we find a problem, as I find a problem with most restrictive – thank you, Harry – we could revisit that most restrictive part at a later date and possibly change it? I mean, is that just like an unwritten thing as opposed to being in a document?

MS. KERNS: The IIT Committee made a list of recommendations of issues that the board should consider revisiting once the transfer program has been up and running in the memo that's dated October 17<sup>th</sup> that was passed out, but under the actions of the board any issue can be taken up at any board meeting and considered to move forward and changed through an addendum or an amendment, depending on what the issue of action is. The most restrictive rule would be able to be changed through an addendum.

MR. GROUT: There was one other question I had for you concerning that compliance report. It says states shall incorporate an annual compliance report of a comprehensive list of this, that and the other thing, but would we be responsible for the Area 3 permittees or would the National Marine Fisheries Service be responsible because that's totally within federal waters?

MS. KERNS: I believe states would be responsible for those fishermen that are dual permit holders that they have that information for, but if someone is a federal-only fisherman, then the National Marine Fisheries Service would need to provide that information because a state would not have that information. If a state needs to work cooperatively with the National Marine Fisheries Service to get information on dual permit holders, then we would need to work with them to see if we could get that information from them.

MR. GROUT: Does that need to be clarified as an editorial in this?

MS. KERNS: I can do that.

CHAIRMAN CULHANE: Anyone else? From the audience, Dave Spencer.

MR. DAVID SPENCER: I'm not sure if this is the appropriate time; and if not, please stop me, but I would like to ask that the board direct the ITT Committee to continue to meet even after the approval of this addendum. I think there are still some issues that do need attention. I think we've made great strides. We have the states and the feds talking and working on solutions, and I don't want to lose that opportunity. I'd like to ask that be considered now. Obviously, there may be some funding issues, and I wanted to bring it up before it's an impossibility. Thank you.

MR. BEAL: On the issue of funding the ITT Group to meet, there is probably money in the budget for



one more meeting this year of that group. Next year's budget that was looked at this morning in the Action Plan Workshop only has three sources for one conference call of the ITT Group.

Conference calls are cheap; we can probably pull more of those together, but if the Lobster Board would like to have face-to-face meetings of the ITT Group, we'll probably need to find some resources during the business session to allow that to happen. I just want to let you know what was in the budget for next year.

MR. DAN McKIERNAN: I don't know if this is the time to talk about any specifics that are in the document; is this the time to do that?

CHAIRMAN CULHANE: Unless there are any other questions for Toni, I think we can move on to that. Go ahead, Dan. Bill, do you have a question?

MR. ADLER: Yes, just to follow up with what Bob said and Dave Spencer said, I would like to have some way available for this group to meet. The reason is I still find that some things in here may in fact be a hiccup, and I would like them to be able to be found out sooner rather than later so that maybe if there is a possible hiccup coming, that we could fix it before it happens. I think that a meeting of that group should happen. I would ask that there be some consideration to allow this little group to meet. Bob, I would like that. Thank you.

CHAIRMAN CULHANE: Any other questions for Toni? Okay, Dan, go ahead.

MR. McKIERNAN: My comments pertain to Section 4.3.2, conservation tax on transfers, and I just want to point out to the board the conundrum that the Commonwealth is going to be in because of the fact that we raced out of the box right away on the Outer Cape Plan, and we enacted the Area 2 rules, in my opinion, on schedule.

We have been applying conservation taxes on individuals who have been selling their whole businesses from Day One. That has been captured in Addendum III for Outer Cape. It was reaffirmed in Addendum XIII, which was passed in May. As far as Area 2 goes, in my view and in the eyes of our regulations, Addendum VII and IX both established transfer taxes and make reference to the fact that any transfer of allocation includes the allocation in its entirety; so if you sell your lobster business and your permit and the history, et cetera, et cetera, the allocations being transferred, so it made perfect sense

for us to tax these allocations when they were being transferred in their entirety by whole businesses.

I really don't want to see the new text in that section go forward in this document. I think we can work this out administratively and even with some of the attorneys as far as how we deal with these issues going forward, but to put this document out with this language suggests that I have to suspend all transfer taxes of whole businesses until the time that NMFS completes its rulemaking, which we don't know how long that is going to take, and we're going to lose one, two, three, possibly four years of opportunity to extract these 10 percent conservation taxes.

I want to remind the board the reason we're doing all of this is because the industry did not want quotas, big increases in minimum size, they didn't want aggressive management, but they wanted effort control with a long-term goal of reductions over time with these rather benign, passive reductions; passive meaning when you sold your business, then the recipient got 10 percent less in trap numbers.

In the Outer Cape I think I've transferred like 13 permits in four years; in Area 2 about 8 permits, and so these things are going on. I think that language really boxes us in and sort of penalizes the states that were responsible about getting ahead and implementing these rules as stated. I do believe that we can work this out administratively between Rhode Island and myself and NMFS about how we're going to deal in the future.

When a state applied a transfer tax to a dual permit, it's dual because the holder has a state license and also has a federal license, both to fish; and so under the most restrictive rule, if we were to turn the dial 10 percent down on that trap allocation, well, that's in our regulations and it's in our administrative system. I'll stop there, but I'm asking the board to not put that language in there. Even though it was the majority view of the transfer committee, it puts me in a really difficult bind.

MR. HARRY MEARS: There have been several inconsistencies over various approaches as the subcommittee has met and deliberated to try to arrive at a document that essentially represents in many ways a consensus document that is a milestone at least for the ability of the National Marine Fisheries Service to move forward with rulemaking.

Notwithstanding Dan's dilemma, our own dilemma from a federal perspective is that we fully understand the prerogative of a state jurisdiction on taxing and

implementing inter-transferability programs before the federal government. Where we get into a bind that becomes severely compromising to our ability to move forward with proposed complementary regulations is where those state actions impact what is attached to a federal trap fishing history.

From our perspective this is more than a minor issue that can be potentially administratively fixed and repaired as a blemish as time goes on. We've spent a lot of time on removing inconsistencies; and to have this predicament where we have taxing on federal trap history before we have federal regulations in place severely compromises our ability to go forward with rulemaking.

I'm not downplaying Dan's concern, but this is a severe concern as well on the other end for the National Marine Fisheries Service for us to adopt complementary regulations especially if they're equitable to lobster trap permit holders regardless of where they live. So, once again, I would be against a change to remove this sentence from the current draft addendum. Thank you.

MR. McKIERNAN: One resolution that I could envision is if the state taxed the sale of a dually permitted business and the federal portion of that business, NMFS could still issue a higher trap number; and if that permit holder didn't like what the state did, they could surrender the state permit and go fish that permit in federal waters.

The state is not suggesting that we're going to tax or affect the federal permit. You know, they're reserving their jurisdiction and we respect that. So anytime you've got these conflicting standards, the more restrictive rule can apply, but it's also capable that the individual can surrender the permit in that jurisdiction if they don't like the treatment. Just like in that matrix, it said if you want to transfer your permit to a federal-only permit holder, you surrender the state-only aspect of it. I don't think it's that complicated.

CHAIRMAN CULHANE: Anybody else from the board on this? Dave Spencer has his hand up in the back, so, Dave, come on up and give us your comments.

MR. SPENCER: I'd just like to offer industry's perspective to this dilemma. I think, number one, if NMFS and the states could work this out as Dan requests, I don't think industry would have a concern. However, we do have a very large concern that if this divide widens between the states and NMFS, industry

will be caught in the middle and essentially will be the group that is punished by this in terms of any sort of delay or increase in time that it causes NMFS to go through their rulemaking will be a longer period of time that it takes for industry to get a transferable system.

There is also a concern that if we're not in lockstep and this cannot be resolved and we don't go forward with the Addendum XII language, there could potentially be some trades that do occur and would be undone, and again industry would be the user group that suffers from this. That is where industry is coming from. I hope we can work this out and it doesn't become a problem. Thank you.

MR. MEARS: As I indicated previously, from my opinion, especially starting from where we began, where we had substantive inconsistencies and have finally come up with a document that represents as close an approach as we're going to get, we now have the ability to keep any difference in trap allocations, such as those we're talking about now that would result from a taxing on businesses by state and federal permit holders, to a minimum.

We now have the ability to move forward so that we can be reasonably assured that we have as close an approximation as we can get as we proceed into, in this case, continued federal rulemaking to try to adopt a complementary transferability system. I guess my question to Dan is recognizing you've already made some transfers and recognizing the increasing divergence that is the potential here that could make all the difference in the world in terms of the size of the gap between what a federal trap allocation would be and the state allocation would be for dual permit holders; why could the state not decide to postpone any further taxes until such time all regulations are in place?

This issue was discussed, I know, in detail at the recent subcommittee meeting. Plus, it would be in accordance with the addendum language which indicated that there should be no taxes until all jurisdictions had qualified their lobster trap fishermen as well as made the respective trap allocations.

MR. GIBSON: I don't know if you want to discuss this anymore, but I'm ready to make a motion and move Addendum XII forward as drafted for further public comment and final action at some future time.

CHAIRMAN CULHANE: Thank you; please do.

MR. GIBSON: I would move that this board approve Addendum XII for further public comment, with an understanding that it will be considered for final action at a future board meeting. I don't know what future board, whether it's going to be a supplemental one or a February one, so it would be with the understanding at the next possible board.

CHAIRMAN CULHANE: Thank you, Mark; do I have a second? Dennis Abbott seconded. Discussion on the motion? Mark.

MR. MARK ALEXANDER: I wanted to get a comment in before such a motion was made. I have an issue with another section in the document that I would like discussed before the whole thing is approved. On Page 17, at the top, under Section 4.5, regarding the compliance reports, Connecticut has a statute – our confidentiality statute interprets individual trap allocations as confidential information. We would have a problem appending that information to a compliance report that's essentially a public document.

If we could, I would like to strike the words "comprehensive list" and the "with summaries", parenthetical and substitute for that just the word "summary". We would be willing to provide detailed information to NMFS or whatever other authority might need that information to coordinate transfers or to coordinate allocations, but we would not like to have that appended to a compliance report.

CHAIRMAN CULHANE: If I don't see any objection, I think we could incorporate that into this. I see heads nodding on that; okay. Pete.

MR. PETER HIMCHAK: Mr. Chairman, there is a precedent for this because in the Horseshoe Crab Compliance Reports you're required to provide the data for the biomedical company within your state, and typically what we do is we talk in percentages and how they're collected, but the actual numbers of horseshoe crabs are not put in the compliance reports. They're provided to the FMP coordinator and they're summarized for the board. There is a precedent for protecting confidentiality.

MR. ALEXANDER: Just so I understand, the wording will be changed before this document goes out for public comment?

CHAIRMAN CULHANE: Toni is shaking her head yes, and Toni is indicating it will also indicate the modifications that Doug asked for. Any other comments from the board? I see Dave Spencer's hand up in the back.

MR. SPENCER: Mr. Chairman, I had a question. In the memo that was sent around there was an item on leasing, and my question would be would that be included in this addendum as well?

MS. KERNS: David, it's already included and it is on Page 15; traps cannot be leased.

CHAIRMAN CULHANE: Any further discussion; are we ready to call the question? Do states need time to caucus? All in favor of the motion please raise their right hand; all opposed, same sign; any abstentions; any null votes. The motion passed. We're going to go back for Vince's update on the Rhode Island Court Case.

## **RHODE ISLAND COURT CASE UPDATE**

EXECUTIVE DIRECTOR JOHN V. O'SHEA: I apologize for not being here when you considered this item at the beginning of the meeting. Members of the board might be aware that the Rhode Island Fishermen's Alliance had brought suit against Michael J. Sullivan, Rhode Island DEM, on the issue of eligibility for trap tags.

The commission intervened in that complaint as a defendant and also moved that the case be brought into federal court. It was originally brought in Rhode Island State Court. I think it was two or three weeks ago Judge Lisi issued a decision in the case granting the defendant's motion to summary judgment in favor of Rhode Island DEM.

It's an interesting case. It's about a 29-page decision, but there are three interesting items of note in it. One was the decision by the judge that the action by Rhode Island DEM to limit who could fish does not necessarily violate the state constitutional provision that fishery resources belong to the public. In coming to that conclusion, the judge relied heavily on a recent Rhode Island Supreme Court case named Riley that came to that same conclusion.

In fact, Judge Lisi and Riley both noted that the legislature had put a requirement on DEM to take action to preserve and protect those natural resources, including limiting who would have access to those. Those of you who have been around for the Mederios' case, the 100/500, part of the plaintiff's argument in that case was also this Rhode Island constitutional right to harvest marine resources.

The second issue of interest was the judge went through a lengthy description of the ASMFC process, as well as the ASMFC public process, and stated it and recognized it in legal terms. I think it's a good explanation, and I think it will be a valuable explanation going forward to challenges or complaints about the lack of public process when the ASMFC reaches a decision. The judge took care to note the different steps that the plaintiffs had to provide input into the process.

The third was that the judge recognized that under ASMFC the commission has had a long-standing practice of allowing the states through conservation equivalency to come up with alternative plans and alternative measures. The court said that just because that provision exists within ASMFC, that doesn't make the underlying ASMFC requirement optional, which was what part of the argument was by the plaintiff.

So, three good points; it's an easy, straightforward case to read. If folks are interested in getting the decision, I would be happy to e-mail it to them, Mr. Chairman. Our attorney in this case was Sean Donohue, who is the attorney who had defended us in the summer flounder lawsuit and had also been helping us on the attempt to move to Medeiros' to the Supreme Court, which was denied by the Supreme Court. Good work by the attorney and Toni Kerns who assembled the administration record that the commission submitted. Thank you, Mr. Chairman.

CHAIRMAN CULHANE: Thank you, Vince. Dan, did you have a question?

MR. McKIERNAN: Well, I have a follow-up comment. In 2006 the Commonwealth of Massachusetts denied trap tags to a federal permit holder under the authority of the Interstate Plan. That was challenged in a state court and we prevailed. I'd be happy to share that court decision with the commission as well.

## **LCMT REPORT FOR LCMA 1**

CHAIRMAN CULHANE: Thank you, Dan. Okay, if nobody has any questions, we will move on. We have an LCMT report for Area 1. Terry Stockwell is going to give us that report.

MR. TERRY STOCKWELL: Terry Stockwell on behalf of LCMT 1. At your summer meeting I gave a very brief report on the three meetings that LCMT 1 had had to discuss limited entry. Copies of the

minutes from each of the meetings are in the briefing book. Essentially what LCMT 1 is doing is considering limited entry.

There was a motion and a statement of the problem and goals that were included in your summary. Essentially at your last meeting we ran out of time, and there was no board discussion on any of this. I'm seeking guidance from the board before the LCMT reconvenes. I'll briefly go over the statement of the problem, the purpose and goal and the motion, and I'm going to be looking for clarity on are the goals clear enough.

There is also a control date, and is that acceptable to the board; and if not, what other alternatives and options might you recommend to the LCMT. They will likely not be meeting again until January, so we have a little bit of time.

The statement of the problem is a concern with the unrestricted access to the Lobster Management Area 1 within federal waters. The purpose and goal is, one, to curtail influx of new trap permits and effort into the LMA EEZ waters while still maintaining the following process. One is to allow the possibility of permit transfers within the area. Two is to maintain culture and historic participation. Three is to maintain conservation value.

The second goal is to draft options for potential limited trap entry into Area 1 within EEZ waters and restricting the movement of area designation within the NOAA permit process and restrict the movement of non-trap permits to trap permits. There was a full consensus from the team in favor of this statement of the problem and the purpose and goal.

A motion was made to require a qualification process for federal permit holders to obtain authorization to maintain LMA 1 permits. One would be a federal permit and proof of designation as of July 1, 2008, and appropriate trap tag orders for years 2007 and 2008 as of July 2008.

A significant amount of time and a whole lot of emotion was put into this discussion. They're really at the point where they're collectively looking for your guidance and concurrence that they should move ahead. If I can indulge upon you a little bit of conversation on the statement of the problem; is it sufficient for you all to move ahead with; are the purpose and goals clear enough; and if not, what advice can I bring back to them?

MR. GEORGE D. LAPOINTE: Mr. Chairman, it strikes me – I mean, obviously, the LCMT can bring things forward because that’s what they’re there for. Under the purpose and goals, with the action we just took to bring Addendum XII out to public hearing; didn’t the action we took for Area 1 address some of the problems in here, and we should tease that apart to give them focus?

MS. KERNS: The action that we take for Area 1 is only going to affect those individuals that transfer traps, so it’s only those that are actively transferring traps as opposed to permits.

MR. GROUT: I just wanted, for clarification, to see if this is really something that the National Marine Fisheries Service would have to implement. Is this something that they feel that they could implement in its concept form, understanding that we need to still flush out the details – the LCMT to still flush out details?

CHAIRMAN CULHANE: Harry, would you like to respond to that?

MR. MEARS. Certainly, this would be step one of such action. Conceptually it would be possible if the LCMT 1 and subsequently the board decided to pursue it. Thinking off the top of my head, it would probably require, for example, a control date, but I’m not sure. But, certainly, conceptually possible, it would be.

MR. ADLER: Mr. Chairman, I’m trying to explain the two differences here, and, Terry, correct me if I’m wrong. This was a meeting back in the summer. What Toni said is right; Addendum XII has to do with the concept of a person lobster trap fishing in one area, selling his allocation, and then going to the federal government and changing his area status, moving up into Area 1 and setting a brand new 800-pot traps that were never there before. That’s what the Addendum XII has in one of its parts.

The LCMTs were concerned about those in Area 1 or could move into Area 1; never had traps, but can apply for traps, and the concern of the LCMTs was they didn’t want an increase in trap effort in Area 1 or they’re going to be in trouble again. I think the LCMTs were trying to place some type of a limit or a limited ability for more traps that might be coming from an authorized licensed lobster person but who is not using traps. There is a difference there. That’s where I was coming from or what I heard back in July. Correct me if I’m wrong.

MR. STOCKWELL: Bill, you’re just about spot-on. This whole Area 1 limited entry discussion began following a discussion of the ITT and the Addendum XII issues. Once the LCMT started to understand what it was all about, particularly how it would impact and didn’t impact Area 1, they began to think about how can they better maintain effort control within Area 1 and still have some limited amount of transfers within Area 1.

They didn’t want to see – Addendum XII is going to answer a number of the issues that George raised that were initial concerns from the LCMT members, but the intent of their motion is to plug the rest of the holes.

MS. KERNS: I just want to make sure that the board knows you can’t get a new lobster permit from the National Marine Fisheries Service. It’s just that individuals with a federal permit can change their election of area every year as well as you can change your election of traps and non-traps. An individual could have had traps in the past but not in Area 1, and he could then elect Area 1 and put traps into the federal waters of Area 1.

MR. McKIERNAN: In light of Doug’s comment, and the question is to Harry, if the LCMT for Area 1 wants to create a future limited entry scheme for vessels that would be fishing traps in Area 1, would it help if this board voted a control date today that you could then put into your own proposed rules and it would all have to done at the federal level?

MR. MEARS: I think conceptually, yes, again, but I’m just wondering from an ASMFC process perspective that if we’re talking about a limited entry regime for Area 1 that has never been part of the state/federal lobster framework – this is probably a question for Toni – would this require an addendum in and of itself? So, again, I think the board could do what it wants. It could recommend it today, but I’m not so sure as a board member whether it could do such a recommendation in the absence of an addendum to address public comment for that possibility.

CHARMAN CULHANE: Bob, help us out here.

MR. BEAL: I don’t know if I can. The commission hasn’t in the past, anyway, established control dates on any species that I can think of. A lot of times we do that in conjunction with the development of an addendum, but it doesn’t the commission can’t do that. We don’t have control date provisions in the Charter and other things like that, but if the

commission wanted to select a date, whatever that is, current date or something in the past, and say we may consider a future action in the future and the status of things on this date is going to impact or influence how that future decision affects an individual; I mean, I think the commission has the ability to do that.

We would have to notify the public that the board has selected a date and your status on this date probably will affect how the future rule affects you. I think the commission has the flexibility to do that. It would just be something new that we haven't done before.

MR. McKIERNAN: It's my opinion that given the details that are in the motion from the Area 1 LCMT that a control date done during this window, you know, now would be effective. If we waited until after the license renewal times and trap tag order times begin, and if that deadline for having either participated in the trap fishery in Area 1 EEZ or order trap tags for that area, if you don't adopt a date such as today, then vessels that might want to switch over to trap fishing could easily meet the criteria in the near future by simply ordering trap tags in the upcoming trap tag ordering season. If a motion is appropriate, I'd like to make one.

CHAIRMAN CULHANE: My concern is that we do something that we are allowed to do under the FMP, and I don't know the answer to that off the top of my head. I see some sentiment around the table that this is what people want, and we don't think that we can't, so I will entertain that motion.

MR. McKIERNAN: My motion would be to establish October 21, 2008, as a control date that may be used to affect future participation in the Area 1 Trap Fishery in the EEZ.

CHAIRMAN CULHANE: Thank you, Dan; do we have second? Seconded by Pat White. Bill Adler, you have a question?

MR. ADLER: No, I'd like to speak in favor of this motion. First of all, understanding that if we can do control dates, which we figure we probably can, it is not written in stone, as control dates are, that the dates can't be moved – the control date could be eliminated in the future if we determined that we don't want it. – it can moved not to earlier than this, but could always be moved back if we feel that we need to do that. I don't think we do.

As Dan explained, the reasoning behind this is that the LCMTs wanted to possibly close the door to stop increased trap effort in Area 1. Also by approving

this motion, we've at least told the LCMTs from Area 1 that we were listening to them, and we understood what they were trying to get at; and while we can't just automatically make it all happen because we have to go through a process, this at least gives them the incentive that they did listen to us and they understand our concern. I think that helps with the PR between the industry and this board, so there are a number of reasons why I think this is a good motion to pass. Thank you.

CHAIRMAN CULHANE: Thank you, Bill. Any other comments? Vince.

EXECUTIVE DIRECTOR O'SHEA: Mr. Chairman, with regard to the precedent involved in the commission doing this, I think if this were to go forward I think it would be important to understand the context of what this does. Now in some cases – and, again, I don't know what this does. That would have to be developed by the board, but in some cases a control date is serving notice to the public that participants in a fishery after the particular date are going to get treated differently somehow from the participants that are in the fishery prior to the control date.

At the same time there is an issue of how much obligation it puts on the board with the control date. I think those are two issues that probably ought to be teased out in the rationale if this were to go forward as to what does this do to the participants potentially and what obligation, if any, does it put the board under. I think those are the two issues that you might want to think about, Mr. Chairman.

MR. MEARS: Mr. Chairman, my comments I think are similar to Vince's, but if you could bear with me thinking out loud on the issue, a recommendation or actually an action for the federal government to do a control date would be the result of a recommendation to the Secretary once some FMP action has been completed.

Even though I'm going to abstain on this motion, I'm wondering how it's not only going to be construed by the public but by us, the board. In fact, for example, do we or do we not intend on moving forward at some point with an addendum to implement a limited entry regime in Area 1, which is essentially one of the few areas now where do not have limited entry.

Again, it's the backward nature of this action that is puzzling me. I think we can do it. I'm just thinking of what context it's being requested, number one. Should we publish a control date notice, how we

explain what the impact is to the public without knowing the intentions of the board on where it is going with such a recommendation to the federal government. Thank you.

MR. LAPOINTE: I think my questions follow on Vince's and Harry's. We haven't discussed the rest of the statement of problem and whatnot. If we publish this control date and we start moving forward, there will be an expectation that the Area 1 LCMT will start meeting, I suspect, and try to flesh this out because people are really concerned about what is happening in the fishery.

If we've learned nothing, if we have learned nothing from what has happened with the discussion with Addendum XII, it is that this is going to take a bucket load of time and thought if we want to do this well. We need to report back to the LCMT to get all the bugs and warts out of this before it goes forward. If you look at the purpose and goals, we want limited entry but we want to maintain historical and cultural participation.

You know, we have to be really clear about the process that we would ask them to go forward with. We have to be clear that the LCMT Advisory Group is – how many people, you know, sit on the LCMT 1 team, 20, 30? There are a whole bucket load of other people I know in the People's Republic of Maine who haven't been paying attention to this, who some of them might love it and some of them might hate it, but when you mention new limited entry programs, guess what, red flags come up.

If they start on this process, I want to be clear that it's going to be done with lots of public input and it's going to be done with a lot of deliberate speed so that in fact they don't think they're going to have a hastily put together limited entry program in a couple of months, because that may be the expectations of some people who want action now.

CHAIRMAN CULHANE: Any other comments? Would anybody in the audience like to comment on this? Okay, we have a motion before us. If nobody else has any comments on it, we should take a vote, so let's get this one out of the way. Do we need a minute to caucus? Okay, take one minute.

MR. LAPOINTE: Mr. Chairman, can we take our one-minute caucus and make it a five-minute out so we can figure out what we're doing here?

CHAIRMAN CULHANE: I think that's a good idea; why don't we take a five-minute break and we can work on this a little bit.

MS. KERNS: I think there might be a perfection to the motion from Dan. Just for a recommendation for NMFS, it's to establish also a control rule.

CHAIRMAN CULHANE: Why don't we take the five-minute break and maybe you guys could talk together and see if we can come up with something that works for everybody.

(Whereupon, a recess was taken.)

CHAIRMAN CULHANE: If everybody could take their seats again, I think the five-minute break is over. We have a possible resolution to this. Okay, Dan, do you want to handle this?

MR. McKIERNAN: I think there may be a substitute motion.

CHAIRMAN CULHANE: That's right, we have a substitute motion.

MR. LAPOINTE: I'm in an awkward spot. I like the language better, but I might have to vote against my own motion. I'm still struggling with this, but it would be a motion to substitute the following language: Initiate an addendum that includes; a, options for a limited entry program for LCMA 1; and b, a control date of 21 October 2008 that may be used to affect future participation in the Area 1 Trap Fishery in the EEZ.

CHAIRMAN CULHANE: Dan, do you accept that as a substitute?

MR. McKIERNAN: I do.

CHAIRMAN CULHANE: Okay, any discussion on the substitute motion? Harry.

MR. MEARS: Mr. Chairman, just a clarification. Is it the intent of the motion as this time to recommend to the federal government to establish a control date or only upon subsequent adoption of an addendum?

CHAIRMAN CULHANE: I'm looking to the maker of the motion.

MR. LAPOINTE: I believe it would be the latter; so when the addendum would go forward, it would include a control date at that time.

MR. MEARS: My only comment, then, would be on semantics relative to the specific date and our ability to use or not use a date in the past to establish as a control date.

MR. PATTEN D. WHITE: A question to George of Dan; do we want to limit this to just the trap fishery licenses?

MR. McKIERNAN: I think every jurisdiction already has limited entry in the lobster licenses, so there aren't any new licenses being issued for the non-trap sector.

MR. P. WHITE: Mr. Chairman, while they're deliberating, just a question of procedure. As a substitute motion, then is it automatically assumed that the Mr. McKiernan is the seconder of the motion? How does that work?

CHAIRMAN CULHANE: Vince, could you answer that?

EXECUTIVE DIRECTOR O'SHEA: I think if the intent is to basically start all over again, the neatest way to do it to withdraw the original motion, the maker and the seconder, and then just have Mr. Lapointe's motion be what is on the table rather than go through the whole voting process. My sense around the table is that the reason you took the stand-down was to come up with a slightly different motion.

CHAIRMAN CULHANE: Well, for the purposes of clarity, then we need to have a second on there. Bill Adler.

MR. ADLER: I'll second.

CHAIRMAN CULHANE: Okay, the motion has been seconded by Bill Adler. Okay, Dan, could you withdraw your original motion.

MR. McKIERNAN: Certainly, I withdraw my motion.

CHAIRMAN CULHANE: Okay, the original motion has been withdrawn. We have a motion by Mr. Lapointe; seconded by Mr. Adler. George.

MR. LAPOINTE: I think we need some clarification, and let me talk about it before we act. In talking with our federal partners, they suggested – well, there is trouble with a retroactive control date and so they suggested a better way would be to move to initiate an addendum that contains options for a

limited entry program; and B would be request publication of a control date – not putting a date in because it would be on whatever federal registered publication date – so it would be request publication of a control date that may be used to affect future participation.

CHAIRMAN CULHANE: So you're offering that as a medication to your motion?

MR. LAPOINTE: Yes.

CHAIRMAN CULHANE: Is that acceptable to the seconder?

MR. ADLER: Yes.

MR. GROUT: And does the maker of the motion want to apply this only to the trap fishery and not the mobile gear fishery? Should this not be Area 1 Lobster Fishery instead of trap fishery in the last line?

MR. LAPOINTE: My compadre over here had the same suggestion. I am fine with taking the trap fishery out if that makes it better. We should check with the seconder of the motion probably.

CHAIRMAN CULHANE: Is that acceptable to the seconder?

MR. ADLER: Could you repeat that, please?

MR. LAPOINTE: It would be taking the words "trap fishery" out so it would be the "Area 1 Lobster Fishery in the EEZ".

MR. ADLER: Which would mean what, George?

MR. LAPOINTE: I'm not quite sure so I'm hoping Doug and Pat help me out.

MR. GROUT: The question I had is do we want this only to apply to the trap fishery? What about the mobile gear fishery; do you want to allow them to move into Area 1, and so that's –

MR. ADLER: No.

MR. GROUT: That's why I was suggesting to the maker of the motion as a friendly amendment to take out "trap" and just put "Lobster Fishery".

MR. ADLER: Yes, I think that would be better.

MR. P. WHITE: Mr. Chairman, could you or someone explain to me then what the timeframe



would be with the Service on initiating this; can they do this with some sense of immediacy or is this drawn out?

CHAIRMAN CULHANE: Will, I look to the Service, but we're kind of putting them on the spot. I don't know if they were expecting this when they came here today, but, Harry, would you like to try to respond.

MR. MEARS: Again, if the forwarding of this recommendation could make an indication that it be expedited, control dates certainly are not as complicated at all. It's like publishing a notice. I want to say it could probably be done in a one- to two-month timeframe, without being quoted on that.

I'm already in the minutes, but one other comment I have with this change which was just made to take out the word "trap"; the federal government has no mechanism to regulate – we do not require non-trap vessels to declare areas, so I'm not quite sure what this motion would mean. It means something very specific and definable for the trap fishery, but from a federal perspective not for the non-trap fishery because they're not required to declare areas.

CHAIRMAN CULHANE: Thank you, Harry. Tony has a question.

MS. KERNS: George, is it your intention that the addendum would have the option for a limited entry program as well as the request for the control date or are you trying to make a request for the control date now and we develop an addendum with "A"?

MR. LAPOINTE: Yes, the latter. If this motion passes, it would be that we write a letter to NMFS saying we request publication of a control date, and then we would – and notwithstanding the comments we had; or, actually not withstanding nothing; paying attention to the comments we had about workload and whatnot, we would then move towards an addendum that would contain the options. I suspect we would go back to the LCMT to try to answer some of the inconsistencies in their intent.

MS. KERNS: I think it would read better if we got rid of the A and the B, because the way it reads with the A and B it sounds like the request for the control date needs to be a part of the addendum.

MR. LAPOINTE: Fair enough; and I think based on what Harry said about it's got to be for the trap fishery; otherwise, he said the mobile gear fishery

doesn't have areas listed on it. Is that what you said, Harry?

MS. KERNS: Harry, does the mobile gear fishery, on their permit, check off the areas that they are fishing in?

MR. MEARS: No, it's only the trap fishermen. That's the sidebar conversation we're having. It seems the intent of the motion is to harbor against an unanticipated explosion of trap fishing effort in Area 1. A recommendation I would have would be, having said that, to put the word "trap" back into the motion.

I am not going to make a motion to do that, but for me that makes much more sense based upon the discussion we had and what is being asked of the federal government. But to answer your question, Toni, no, we do not require non-trap fishermen to declare areas.

MR. LAPOINTE: I feel like I'm Abbott and Costello and who's on first, but I'm fine with that.

CHAIRMAN CULHANE: Bill, can you accept that?

MR. ADLER: Yes, I can because as Harry was rightfully saying, the purpose of the LCMT proposal here, which we're trying to do, had to do with their concern that there would be more traps into the Area 1 fishery. They were not attacking the non-trap sector catching the lobsters the way they catch them now. They just didn't want more traps; so if putting the trap back in says that, then that's where I am, yes.

MR. P. WHITE: I guess I have concerns about Harry's public comment that is on the record now; because if, indeed, this takes over two months, we've totally lost the effect of what this whole motion is about right now. I guess I would like some way of some clarification. I thought we had this discussion like two meetings ago, and this is something that could have been done – it may have been relative to something else, Harry, but it could have done on a faster track than that. But, two months just voids everything that we're trying to do, I think.

MR. MEARS: I'm in a tight situation here since this is the first mention of this recommendation at this meeting that is being made. We certainly will try as soon as we can to follow such a recommendation if this motion were approved and such a letter was submitted to the federal government to move forward with a public notice.

EXECUTIVE DIRECTOR O'SHEA: Well, if this motion were to pass; and based on what has been said, my suggestion would be the letter put something in there in the request "as soon as practicable" or to convey that sense of urgency that I just heard around the table. I don't think it needs to be in the motion, but it's a task that would be with that understanding.

CHAIRMAN CULHANE: Thank you, Vince. Joe has a comment.

COLONEL JOE FESSENDEN: Well, it's kind of a question for Harry that may relieve some concerns. I'm under the impression you can't change your area designation – the only time you can do that is when you're renewing your permit in the spring. So, really, you don't do that until March or April, so you probably do have some time to put this control date in because you can't really change your area designation until you renew your permit in the spring, which is around March or April. The only time you do that is in the spring, I believe, when you renew your permit, so Harry can comment on that maybe.

MR. MEARS: That would be correct, Joe.

CHAIRMAN CULHANE: Thank you, Harry. Is there anymore comment from the board? Any comments from the public? Okay, the motion is move to initiate an addendum that includes options for a limited entry program for LCMA 1 and request publication of a control date that may be used to affect future participation in the Area 1 Trap Fishery in the EEZ. Motion by Mr. Lapointe; seconded by Mr. Adler.

Do we need time to caucus? Okay, all in favor, please raise your right hand; all opposed; abstentions, 6; any null votes. Okay, the motion carries. Pete, did you have a comment?

MR. HIMCHAK: Only if this subject is completed.

CHAIRMAN CULHANE: Yes, I think we're done.

MR. HIMCHAK: Okay, I'm looking at the agenda, and we jumped into this issue on LCMA 1, and on the agenda there is an item for an update on database funding for Addendum XII. While I do not profess to understand all the nuances of Addendum XII, what I do know is that the project proposal and the establishment of this database is critical for keeping track of all the movements of traps under Addendum XII.

Here is the problem that I foresee that I just want to bring up to the board is that the proposal that Toni had submitted for the creation of this database did rank highly with the operations committee and the advisory panel for the ACCSP Coordinating Council. So ranking highly means that your project is within the \$3.5 million available for funding.

Typically, the coordinating councils, in past years, have consistently gone with the recommendations of the operations committee and the advisory panel with the rankings and selected those projects for funding. In this case it will be FY09. However, at Monday's meeting of the Herring Section we passed a motion to recommend to the coordinating council that the bycatch project of \$107,000 that did not rank high enough for funding under the \$3.5, we recommended by a majority that the coordinating council consider this for funding in FY09.

Now, if the coordinating council takes that recommendation and proceeds, then that means that somebody that's ranked higher is in jeopardy of not being funded. So, the Lobster Board may want to re-emphasize – and I'm not a proponent of this, but you may want to make a similar motion that the database funding proposal that Toni submitted be accepted for funding. Otherwise, Addendum XII's database is going to have to look for another funding source.

CHAIRMAN CULHANE: Pete, just in response to that, the funding is implicit in accepting Draft Addendum XII and that message will be conveyed to ACCSP that it's something that we consider to be an important part of that. Thank you. Next we have an update on Draft Addendum XIV from Toni.

## **ADDENDUM XIV UPDATE**

MS. KERNS: At their last board meeting the board asked the plan development team to move ahead with establishing an addendum for Area 3 on making changes that the LCMT had requested to their transfer program that includes trap cap as well as trap taxes. The plan development team is still working on putting that addendum together. Due to some time constraints of staff, they haven't been able to get to that document.

The board noted that document would not go out for public comment until January of 2009 at least because there was no funding in the budget to do an additional addendum in the fiscal year of 2008 under the lobster budget. We are still on track for that addendum in terms of the time planning, and that addendum will come forward to the board next year.

CHAIRMAN CULHANE: Any questions on that? Okay, the next thing on the agenda is the 2008 FMP Review.

## 2008 FMP REVIEW

MS. KERNS: I am going to move forward with presenting the 2008 FMP Review, which reviews the 2007 Lobster Fishery. The plan review team has not been able to come together to make all their final recommendations on this document, so there may be some additional research recommendations or management recommendations that could come forward between now and the winter meeting.

The lobster landings in 2007 were at total of 82 million pounds. This was 13 percent decrease from the 2006 fishing year. The state of Maine composes 77 percent of those landings and the Commonwealth of Massachusetts composes 13 percent of those landings with a combined effort of over 90 percent of the lobster landings coming from those two states.

When looking at the landings by stock area, you have the Gulf of Maine in blue, the Southern New England landings in green and Georges Bank landings in red. The Gulf of Maine has 88 percent of the landings, Georges Bank has 6 percent of the landings, and Southern New England has 7 percent of the landings. Since 1999 the Gulf of Maine has had over 80 percent of the lobster landings in the lobster fishery.

States do a series of monitoring programs that are independent from the fishery, looking at different aspects of the lobster fishery. Included in this monitoring program is young-of-the-year settlement. These surveys are put together to detect trends in abundance of newly settled in juvenile lobster populations, and they tend to provide an accurate picture of a spatial pattern of lobster settlement.

In 2007 in the state of Maine there was a higher than the eight-year average. In the Commonwealth of Massachusetts there was a general increase in settlement over time in the time series for the portion of Massachusetts waters that are in Area 1. Cape Cod Bay saw in improvement from all-time lows in 2005 and 2006 for lobster settlement. Salem Sound and Boston Harbor saw additional declines in settlement.

Rhode Island has seen a decrease in the past two years in lobster settlement. The state of Connecticut had the eighth highest settlement in the time series,

and this was from a very large decrease from 2006. The TC members have shared with me for 2008 some of the settlement indices that they've been starting to see, and they've seen very, very, very low settlement in almost all states that are collecting data for this.

This has been very alarming for some of the TC members. In some areas they're seeing no lobsters where they used to see settlement. That's just preliminary from 2008. All these data that I just reported were from 2007. The committee continues to make recommendations on research needs in the lobster fishery.

We continue to need additional age-and-growth information. The plan review team also continues to want to have a better understanding of lobster mortality and how the ecosystem plays a role in lobster life history, including predator/prey interactions and community structure and climate shifts in ocean currents and temperatures, as well as any toxic substances that cause stress or disease to lobster.

The committee continues to encourage fishery-independent and dependent monitoring in the lobster fishery. The committee is concerned with some of the independent surveys that states are conducting in terms of those states having funding to continue to put forward those surveys, particularly the ventless trap survey which is beginning to have a longer time series and could be used for the lobster assessment if continued.

If states don't receive or find funding for the ventless trap survey, then we won't be able to use that for the assessment because it will end. The plan review team continues to promote the investigation of historical levels of stock production for the lobster fishery. Currently we are limited to the history that we have which begins in 1980 for lobster landings. If we could have a more accurate picture of history, then we could use that in future stock assessments.

The committee encourages the communication with Canada in order to put forward transboundary assessments. The committee encourages the development of new models as new information comes forward. The plan review team recommends that after the stock assessment is produced in May of 2009 that the board consider a socio-economic assessment to be able to look at how the assessment results will impact the fishery in terms of management for social and economic for the fishery.

The committee continues to recommend that the board look at considering establishing triggers to implement management actions for the stock and that the spotlight approach that was presented for the first time at the last assessment would be a great place to start for using triggers in the fishery. They also continue to encourage that the board move towards a hundred percent dealer and harvester reporter for improvements to the stock assessment. Any questions?

MR. P. WHITE: Toni, did I understand you to say that there was a low settlement in all states this year?

MS. KERNS: In the majority of states.

MR. P. WHITE: Okay, and my second question is the ventless trap survey that is currently being funded, when is that done? End of this calendar year; I thought it ran –

MS. KERNS: We have funding through the end of this calendar year. We do not have funding for 2009 is what I understand.

CHAIRMAN CULHANE: Any other questions for Toni? George.

MR. LAPOINTE: Mr. Chairman, I think we have two possible courses of action. One is to approve this conditionally and see what the final modifications the PRT might make or just hold off on approval until the February meeting. I think either one accomplishes the same end.

CHAIRMAN CULHANE: Okay, what is the pleasure of the board? Doug.

MR. GROUT: I'd recommend wait.

### **OTHER BUSINESS**

CHAIRMAN CULHANE: I see some heads nodding. Is it the consensus of the board that we should hold off until the February meeting, then? Okay, then that's what we will do. That brings us to other business. Harry is going to give us an update on the proposed rule.

### **NMFS PROPOSED RULE UPDATE**

MR. MEARS: On October 6<sup>th</sup> a proposed rule was published in the Federal Register in follow up to recommendations to the National Marine Fisheries Service under Addenda X and XI to Amendment 3 of

the Lobster Interstate Plan. In this case there are three primary categories of modifications to federal lobster regulations.

The first is mandatory federal lobster dealer electronic reporting. Number two are changes to lobster maximum carapace length regulations that would begin in July of '09. Finally is a revision to the definition of a standard v-notched lobster that essentially revises the definition to an eighth-inch v-notch with or without setal hairs. The public comment period is now open and will extend through November 20<sup>th</sup>. That's my report, Mr. Chairman.

CHAIRMAN CULHANE: Bill, do you have a question for Harry?

MR. ADLER: Oh, yeah! Harry, I was very upset when you included in this the Outer Cape proposal that I received because that was not in the addenda from the ASMFC. This came as a complete shock to me, first of all, because it was not part of the ASMFC addenda to do the Outer Cape with a maximum and a v-notch change.

They have already done what they were supposed to do. They are not overfished. Their LCMTs put in their plan which was approved by this board and in a previous addendum took care of everything. With no word that this was coming, this surprise attack two weeks ago, this group has always moved through the LCMT process.

If you remember correctly when this all started, it has established the Atlantic States Marine Fisheries Commission as the group that's willing to work with the fishermen. Through the LCMTs, whether you liked them or not, the process was always that you've got a problem, this is the problem, go off and solve it and bring it back to us. It came back, it would go to the technical committee; and if the technical committee approved it, we had a pretty good chance of getting it through.

So it was a process that the LCMTs were always called in when something was going to be done in their area for at least a discussion. There was no call to the LCMT's Outer Cape by anyone to say, "Hey, we plan to drop this bomb on you", which no one expected. It's not that it's a bad idea. The process is here. The question immediately from the Outer Cape was "what are you giving me back? You took something; you're going to take more; I'm not in trouble; what are you going to give me back?"

I understand also from Bob – I had this conversation with Bob, and he explained what the main focus of this was on and the rationale behind it. But, first of all, my problem is the process, and I still think if NMFS was going to jump out ahead of the ASMC and do something that was unannounced, that it would behoove the National Marine Fisheries Service to get the members of the LCMTs and sit down in Chatham and discuss this with them before you move ahead and not just rely on them sending a message into you.

I'm very upset. I have no problem with the rest of this because the rest of this is exactly how it should be. We approve an addendum and they come out with a rule that basically says the same thing. I have no problem with that. It's just the attack on the Outer Cape. Thank you.

CHAIRMAN CULHANE: Harry, did you want to respond?

MR. MEARS: Sure. It certainly was not intended as a bomb or an attack. It was, as I indicated, a followup to recommendations under Addenda X and XI, and it was primarily an enforceability issue and the fact that the Outer Cape is a common transit area for all lobsters in that Area 2, Area 3. It was proposed in this rule, and, certainly, I want to stress it is obviously open for public comment, but it was to protect the integrity of the maximum carapace length resource-wide.

And in terms of what the industry would get back from it, hopefully, it will be more lobsters across the entire resource range. It certainly wasn't, once again, intended as a back-door attempt to do something we wanted to do independent of the commission, but it was something we certainly look as very important in terms of the integrity of what was being recommended as a management measure in federal waters for other management areas.

Certainly, resource-wide, once again we look at it as having very certain payoffs to the lobster resource and we would obviously welcome any public comment on this proposed management measure for the Outer Cape as well as the other management areas where it is being proposed.

MR. ADLER: I understand the enforcement thing, and I actually think it's good, but it's the process of not bringing these guys into the picture and explaining this to them is my biggest problem. As far as what you're going to give them back, well, I think you're going to have to give them back traps or lower

the minimum size of something. You know, that's what I mean giving them back, because part of these things do affect them severely.

But, I think I'd feel better if the National Marine Fisheries Service would make a trip and call those LCMTs and sit down face to face, explain what you're trying to do before you make the final rule. I think that might help. I do understand the enforceability issue very clearly, and I do understand the need to get this loophole fixed. I understand that, but it's the process here, so I would strongly advise the National Marine Fisheries Service to call up and make a trip and visit, let's say, Chatham. Thank you.

CHAIRMAN CULHANE: Any other comments? Okay, the next item that we have under other business, you should all have in front of you a letter from Lance Stewart to the board. Lance was not able to come to the meeting. He sent this letter. Doc, I don't know whether you wanted to introduce this issue.

#### **LETTER FROM DR. LANCE STEWART**

SENATOR GEORGE L. GUNTHER: If I may, Mr. Chairman, I know that Dr. Stewart wanted to be here. We've had concern for many years in the whole setup of the lobster situation in Long Island Sound and the indication of actually Area 6. I would like for the record – I know that you people have just gotten it, and we don't many times – it's only a short presentation, but I would like for the record to repeat this letter and the action I'd like to take place after I've done this.

In quoting Dr. Stewart, "It is obvious that the Area 6 stock is under great environmental pressure from the combination of pollutants and increasing water temperatures. The stock's collapse was not a result of overfishing and has historically showed great production from an enclosed urban sea.

"All studies on migrations from 1966 to 2007 have demonstrated little exchange with other South New England stocks. The population is basically contained within the Long Island Sound Region by nature of three counter-rotation gyres governing larval distribution and settlement. Little if no recruitment can be attributed to the adjacent stocks. The adults molt more frequently and mature at a smaller size than neighboring populations.

"This formed the logic for our lobster restoration attempts, the successful v-notch program, to repopulate with native stocks and retain genetic

tolerance traits. Time will tell if the efforts produce the anticipated rebuilding.

“To put this all in perspective, it would be appropriate for Area 6 to be identified as a unique management zone, recognizing its geographic isolation and the states of Connecticut and New York unprecedented attempts at restoration. It would be realistic for the Lobster Science CTT to review population structure and recommend a separate management option for Long Island Sound. Our lobster industry is severely depressed and the threat of increasing carapace size limits only signals their demise. Their concerns are on the record.” So, if I may, Mr. Chairman, I believe that in order to cover this area I would like to make a motion that Area 6 be identified as a unique management zone.

CHAIRMAN CULHANE: Doc, I’m not really sure what is being implied by this. We have Area 6 and Area 6 is a management zone. I’m not really sure where you’re going with this.

SENATOR GUNTHER: Well, if I might have a second, unless you want to oppose the admission of a motion. I don’t mind proceeding to answer your question if you would like.

CHAIRMAN CULHANE: Doc, hold on a second; I’m going to rule the motion out of order. We just received this letter at the beginning of this meeting. The board hasn’t really had time to consider it. The author of the letter is a member of this commission, and it’s certainly something that could be brought up at a later time.

But to come in under other business at this time with something that I’m kind of having a hard time understanding myself and I have a feeling many other people around the table might be feeling the same way, I would rather not entertain a specific motion on this. I think we should take the letter for what it is. Everybody has a chance to read it and we can consider this at upcoming meetings, hopefully when Lance is here to continue the discussion.

SENATOR GUNTHER: Well, if I may, Mr. Chairman, I believe that we’ve been almost ten years now where we’ve had the crisis in Long Island Sound. During this period there are a lot things that I think – and I think a lot of us in the Long Island Sound Area wish that some action had been taken, not just this constant planning and reports that we get.

In fact, the only studies I know of that have been isolated to Long Island Sound has been the reports from the Long Island Sound Study, which is the EPA Office out of Stamford. Every year they spend thousands, hundreds of thousands of dollars on the studies of what has happened in Long Island Sound.

During that period, everytime we have study, which goes on year after year after year, all we hear is hypoxia and temperature. There is very little, if any, identification of pollutants, pesticides or what have you. I think that what we need to do is emphasize the fact that Long Island Sound is really in a crisis.

In fact, if some suggestions which were made by the scientific committee here on the carapace increase, if it had been continued over the past two or three years, we would have no industry in the lobster industry in either New York or Connecticut. I think right now the facts will show that almost 80 to 85 percent of the fishermen have been eliminated, so we have 15 percent fishermen still out there.

The number of pots out there has been reduced by 80 percent or better. We took the lunch counter out of Long Island Sound, which I think if we took and had some real good surveys on what they were doing, I think that was retaining not only the lobster industry but quite a few of the fin fisheries, which to a lot of us were saying why don’t we identify, why don’t we get in and do these things, and it isn’t happening.

Now this particular motion that I would like to get through here would take care of one thing, which would actually put a stay on the scientific recommendations of any carapace increase; and that’s one that if we had more increase as per their recommendations, we’d end up eliminating the industry in Long Island Sound of both New York and Connecticut. I think that it’s important that we take some sort of action and we do it now. You know, tabling is a great thing. The only thing is nothing ever gets done. I see the use of that too often.

CHAIRMAN CULHANE: Doc, for one thing, as far as putting a stay on any carapace length increases, those are part of a current management plan. We can’t just, through a motion, put a stay on them. The v-notch program acts as a conservation equivalency for that. I won’t entertain a board motion to just put a stay on something that’s currently part of a management plan.

If we’re going to do that, we would have to do it as a part of changes to the management plan. Now, the way I’d like to treat this letter now – I did see some

hands going up – I believe we could have some discussion on this letter, but I will only treat it as that. I'm not ready to take any motions based on this at this point. I'm going to take George first.

MR. LAPOINTE: Mr. Chairman, you're absolutely correct that Long Island Sound is already a unique management area. It's LCMA 6. I mean, the question that's being asked; first of all, there has been a bucket load of work done on Long Island Sound. We've spent \$14 million or something. The states were involved in that, the commission was involved in that, and they came to conclusions that some people may not like, but it was the best work that could be done.

I think that's important to recognize. Then the last thing is it would be a technical question; is there any reason to suspend the management action in Long Island Sound because of the concerns that have been expressed? The precedent for that is huge and I suspect – I don't know – the technical people would say that was not a good course of action.

MR. HIMCHAK: Mr. Chairman, I've read this letter three times very carefully, and, yes, it is a unique management zone and it does have a management option for a lower gauge size. Is Dr. Stewart's intent in here to do the stock assessment – and we're talking about now some severe heavy lifting to meet the time table that we've already discussed this morning.

This letter doesn't exactly state it, but wouldn't you have to do separate stock assessments for the Southern New England Stock with and without Area 6 in order to develop different management options for this unique area? It seems to me that the stock assessment committee would have – I don't even know that they're aware of this, but they would certainly have to give us some guidance.

MR. PATRICK AUGUSTINE: Mr. Chairman, that was really what I gained from this, and it appeared that he is suggesting that it be looked at as a separate stock and a split. It means dual work, but, again, I think we should remand this to the technical committee and staff and that Dr. Stewart get in touch with them to determine what he specifically is asking for.

I do think we should carry this to at least that conclusion and consider other management tools later on. I couldn't support a change in the management regime or even think about that at this stage of the game. I think there are just too many issues here, and

one would be to remand to the technical committee or science committee. Thank you.

MR. LAPOINTE: Take out the word "lobster" in Area 6 and put in "weakfish", and many of the people at this board have been struggling with this issue about increasing controls on the fishery, increasing pressure on the fishery when, in fact, we don't understand entirely what is going on. If you are going to move in this direction, the precedent is huge. I would encourage us not to do that at this point.

MR. P. WHITE: Well, I certainly agree with everything that was said before, and I'd just like to add one thing. There was just a very interesting groundbreaking study that came out of this. They were doing a study of the content of the shell now and finding that there was this dissolved plastic, and it is a much more serious problem than just the insecticide and all these other issues that have been brought to bear. There are continuing studies. There are amazing things being done there now. It is a separate management area.

EXECUTIVE DIRECTOR O'SHEA: Maybe I'll be the negative guy here, but the issue of sending this to the technical committee, almost on a daily basis I have to deal with Dr. Nesslage and other hard-working people that are behind the schedule of getting an assessment done for the whole stock. If folks here on this board haven't gotten that message yet, that we have extra capacity in our technical people to start dealing with this, I'm not sure they understand the full picture.

I just caution putting anymore work on those technical people when we've already made a decision and these guys are working very hard and they're behind schedule on doing something that's really important. I mean, we've got to get this stock assessment done for this board so you all can take action. I would urge caution with the idea of sending this to the technical committee.

MR. ADLER: I don't see the harm, however, in at least asking the technical committee how complicated would – not for them to do it – how complicated would it be to do an isolated stock assessment in this area; that's all, just the question, but not to do it. I don't see the harm there.

REPRESENTATIVE ABBOTT: Just based on the information we have before us provided by Lance, who probably should have been here to do this; otherwise, he should have kept it in his pocket and not put Senator Gunther in the position that he is in

defending something that Lance should be here defending, I don't think there is enough information for us to move in any direction.

I think there are some policy decisions to be made before we would even send it to the technical committee. I also see that we have a motion on the table without a second; and without a second, I think the motion should go away. I would ask the chairman if a motion to adjourn might be in order.

CHAIRMAN CULHANE: Thank you, Dennis, but I had ruled the motion out of order. I do want to congratulate Doc. I thought I had managed to get through a meeting without the word "pesticide" coming up, but it was not to be. Anyway, I think we all have the letter in front of us. What I would like to suggest going forward is that as Chair I will talk to Dr. Stewart about this letter in the interim. Hopefully, Dr. Stewart will be with us at the February meeting; and if he wants to pursue this issue, we can go forward from there. Doc, go ahead.

SENATOR GUNTHER: I'd like to put another bee in your bonnet. Instead of just saying "pesticides", I think you'd better now look at the effect of all endocrines and that that are being concentrated and discharged in our sewer system. We get into the business of practically all the medications that some of us have been talking about – with me, I have a little expertise in that field, having studied homeopathic medicine, having practiced some 79 years and trying to tell people on the infinitesimal amounts of endocrines that can affect all the animals, not just humans, and now the rest of you in the fisheries, just don't look at pesticides.

I mean, that is almost an old hat as far as I'm concerned. With the new hat that is on, and the pharmaceuticals are talking about they're getting into it, but I don't think the emphasis has been made on the fisheries that should have been, so there are areas there. I believe this is a unique area. I think we have established that. I think we are the most crisis-oriented area in the whole lobster fishery, and it has nothing to do with any of the other species. It is peculiar, it is unique and that's why I think it should be emphasized and I think it should be on the deck.

## ADJOURN

CHAIRMAN CULHANE: Well, thank you, Doc; and as far as the area of endocrine disrupters go, I can put in a plug for SUNY Stony Brook who has done some very groundbreaking research on that issue

recently. Does anybody have any other business? Seeing none, this meeting is adjourned. Thank you.

(Whereupon, the meeting was adjourned at 5:28 o'clock p.m., October 21, 2008.)