

PROCEEDINGS
of the
ATLANTIC STATES MARINE FISHERIES COMMISSION
AMERICAN LOBSTER MANAGEMENT BOARD

November 20, 2002
Williamsburg Lodge
Williamsburg, Virginia

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**ATLANTIC STATES MARINE FISHERIES
COMMISSION**

**AMERICAN LOBSTER MANAGEMENT
BOARD**

**Williamsburg Lodge
Williamsburg, Virginia**

November 17-21, 2002

The meeting of the American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Tidewater Room of the Williamsburg Lodge, Williamsburg, Virginia, on Wednesday, November 20, 2002, and was called to order at 8:00 a.m. by Chairman George Lapointe.

Call to Order

CHAIRMAN GEORGE LAPOINTE: Good morning, I'm George Lapointe, chair of the Lobster Board. You are at a meeting of the American Lobster Board of the Atlantic States Marine Fisheries Commission.

Materials for the meeting are a table over at the side. We have a draft meeting agenda that was handed out. I believe it's the same as the -- we will use that agenda with the addition of one item, and that is the addition of a discussion on the final environmental impact statement on Addendum III. Are there other additions or changes to the agenda? Gordon.

MR. GORDON C. COLVIN: Mr. Chairman, I wonder if we could add an Item D to other business and a very short status report on the Lobster Disease Steering Committee activities and perhaps suggest a more extended opportunity for a report by that committee at a future board meeting.

CHAIRMAN LAPOINTE: That would be great. Bruce.

MR. BRUCE FREEMAN: Yes, under other business, George, the progress of the technical amendment to -- this is for limited entry into Area 4.

CHAIRMAN LAPOINTE: Good. Heather,

do we need to do a roll, or is it in your estimation we have a quorum. Maine, New Hampshire, Mass, Rhode Island, New York, Connecticut, Maryland, New Jersey --

MS. HEATHER STIRRATT: Yes.

CHAIRMAN LAPOINTE: We do have a quorum?

MS. STIRRATT: Yes, I would say we do have a quorum.

CHAIRMAN LAPOINTE: All right, good. Before we go farther, I want to recognize Heather for her help and work, in my case, on the Lobster Board.

Heather Stirratt came back for a cameo appearance to help us with this board meeting. She is now with the Highly Migratory Species Division of the National Marine Fisheries Service.

She will be replaced ably by Carrie Selberg, but I wanted to give you my personal thanks and the thanks of the board for a job incredibly well done. (Applause)

The next agenda item is approval of the proceedings from the last board meeting. Those were sent out on the CD-ROM. Are there changes to those proceedings? Bill Adler.

MR. WILLIAM A. ADLER: I'll move they be accepted as printed.

CHAIRMAN LAPOINTE: Bill Adler moves their acceptance, seconded by Pat White. Discussion on the motion? Is there objection to the motion? Seeing none, the proceedings from the last meeting are approved.

The third agenda item is a marker for public comment. If there are members of the public who want to make comment to the board at this point, they are welcome to do that.

You should know that throughout the board meeting, we also welcome public comment on the agenda items as they come up. Is there public comment at this point

Seeing none, we will move to the Plan Review Team

report, Heather.

Plan Review Team Report

MS. STIRRATT: Okay, I believe we're just waiting for the presentation to come up, and in the meantime, I will be referring to the Plan Review Team's Report, which was included on the CD-ROM.

It's entitled, "Update on State Status of State Compliance." It's dated September 30, 2002. I'm going to warn you in advance there may be a few slides where the text is so small that you may not be able to refer to it on the screen.

You do have copies of this information in your packet. Specifically, I would like to reference Page 7 of this report so that you can follow along with some of the things that I'm going to be covering today.

Again, the PRT is going to be providing an update on the status of state compliance following the August 2002 board meeting where the board did request that staff gather together the Plan Review Team members and look at state compliance relative to the most restrictive rule, which is outlined in Amendment 3.

Just to reiterate the text which is found in Amendment 3, it specifically states that fishermen will be required to designate each area in which they intend to fish and may not fish in any zone not so designated.

Fishermen are allowed to place traps in multiple areas but must comply with the most restrictive management measures of all areas fished.

This would include the smallest numbers of traps for any selected area. So to begin with, the first slide, the Plan Review Team actually completed its review and has prepared a report on this subject.

There's a short presentation, again, that I'm going to go through. Specifically, when the Plan Review Team met to discuss this issue, we all noted the need to have a standardized set of criteria before we started reviewing each of the state's regulations.

So, just to outline some of the standardized criteria that we had selected, there were two primary points, the first of which was some reference to the most restrictive rule as it is outlined in Amendment 3.

We were looking specifically for the words "most restrictive rule" in every state regulatory text that we reviewed. We were also looking for some reference to the area-specific management measures.

You may ask, well, how did the states know which area in which they needed to cover in their regulatory text. The Plan Review Team noted that they would have to either look at state data, which is available on permitted areas, or permitted individual selections.

If state data was not available in that regard, then they would need to default to the federal data which is available on area elections in this regard.

Many of you may recall that some time ago, I believe it was back in May, the Plan Review Team provided to the board a report which outlined all of the available data to date, at least for the 2001 fishing year, which is the most complete fishing year to date.

So, again, this is based upon the best available information. In that report -- again, this is probably too small for you all to see. What's important here is that you note that for the state of Maine right now the only data that is available is for Area 1, and that's because the state of Maine is collecting data on a zone-by-zone basis.

For New Hampshire, a very similar situation. The only data that's available is for permit holders in Area 1. Massachusetts, by comparison, does have a substantial amount of data available. You can see that they have data available for Areas 1, 2, 3 and the Outer Cape.

For Rhode Island, again, very little data available, permit holders, primarily, in the adjacent area for Area 2. Connecticut has permit data available for Area 6, and New York also has pretty substantive information available for Areas 2 through 6.

That should just give you some information on which the Plan Review Team was looking to see that in this instance at least the states had to cover this information which was available. And, again, if it was not an all-inclusive database then we, again, would defer back to the federal data.

The federal data is pretty substantive. It actually covers a lot more information. Maine, for instance, has permitted information for Areas 1 through 5 and the Outer Cape.

New Hampshire, a very similar situation to Maine. Massachusetts has information for all seven management areas; Rhode Island, again, all seven management areas; Connecticut, all seven management areas; New York, all seven management areas; and New Jersey, six of the seven areas.

So, with reference to all this information that went into this report, the Plan Review Team basically went through the state regulations for every state on a case-by-case basis.

The columns which are of most importance here for board members to look at are columns one through four which include reference to the most restrictive rule. Either the state had reference here or it didn't. If it didn't, then the PRT considered that as a partial non-compliance.

The other item is, again, on what basis did the state include regulatory text that was area specific. If, in fact, there is no state data available that's all-inclusive, then they must defer to the federal data which is available.

So for the state of Maine, as an example, there was no reference to the most restrictive rule in the regulatory text that the Plan Review Team reviewed.

There was no state data that was readily available or all-inclusive; therefore, resulting back to the federal data which is available, was this approach utilized in the regulatory text to identify area-specific management measures according to the federal data that exists. In this case, no.

Therefore, the PRT has developed a number of recommendations which would help to bring the state of Maine back into compliance. It includes that the state must reference the most restrictive rule in its regulatory text, and that area-specific management measures for Areas 1 through 5 and the Outer Cape should be included in the regulatory text in order to be in compliance with this rule.

It's also worth noting -- and it's something that the Plan Review Team looked at pretty carefully -- obviously, we know that for the states to be able to say that they've got very good data on permit area elections, then it is going to be absolutely imperative for them to be implementing the area trap tag requirements, whereby the area is required in Amendment 3 to be on each trap

tag that is issued.

In the state of Maine, for instance, Maine is issuing an area number based upon the zones within Area 1, but Maine is not issuing, obviously, trap tags that have the management zones that the commission currently operates under, so that is another compliance issue in this regard.

So, just to reiterate for the state of Maine, specifically, there are compliance issues relative to implementing the most restrictive rule. There are also compliance issues relative to the area required on the trap tag information. Are there any questions about the state of Maine before I move on?

For New Hampshire, a very similar situation; however, New Hampshire has -- as you may recall from previous meetings, they have done their best to try and address the most restrictive rule in a very uncertain time, I would say, when we were all looking for some further guidance.

Relative to reference for the most restrictive rule, was it in the regulatory text, the answer is no. They did not have all-inclusive state data available, so we deferred over to the federal data which is available.

They have partially addressed area-specific management measures within their regulatory text. Specifically, their regulations address Areas 1, 2 and 3.

However, the Plan Review Team noted that this only addressed the minimum sizes. According to a literal interpretation of Amendment 3 relative to the most restrictive rule, it should be all management measures, all-inclusive, so that would include trap numbers and trap allocations.

Finally, is the area required on the trap tag? In the state of New Hampshire it is, so that was no longer an issue for them. And relative to the Plan Review Team's comments and recommendations, again, we are recommending that the state implement the most restrictive rule in terms of its regulatory text and that it also include trap numbers and allocations as well as all management measures, including minimum sizes for the federal data which is in existence for Areas 1 through 5 and the Outer Cape.

Are there any questions about the New Hampshire

recommendations?

Beginning for the state of Massachusetts, again, we looked to see if there was reference to the most restrictive rule. The Plan Review Team noted that there is reference to the most restrictive rule in the Massachusetts regulatory text.

Specifically, it falls under the permit restrictions section of the lobster regulation summary. In addition, we looked to see if there was state data available for Massachusetts that was all-inclusive, and, in fact, there is.

In this circumstance, the Plan Review Team would defer directly to the available state data, and if, in fact, again, it was not available, we would go to the federal. In this case it does exist.

Did Massachusetts address area-specific management measures within its regulatory text? It partially does because it notes all areas; however, it does not specify exactly what the requirements are for each one of those areas, so we gave it a partial rating here. Finally, is the area required on the trap tag? Yes, in fact, it is in the state of Massachusetts.

Finally, the Plan Review Team comments or recommendations are that Massachusetts must outline area-specific management measures for Areas 1 through 3; and, again, that is based upon state data. Any questions about the Massachusetts comments?

For Rhode Island, we looked to see if most restrictive rule was referenced. It is, in fact, referenced. The parts, it looks like Section 15, 14.1, Subsection 1.A.6.

State data is, in fact, available in the state of Rhode Island, and also federal data exists. It was interesting to note that the Rhode Island regulatory text does state that if there is any difference in opinions between state and federal data, that federal data will preside.

The approach utilized in terms of identifying area-specific management measures was partially rated, primarily because Rhode Island currently references all areas, again, very similar to Massachusetts' approach.

It's my understanding that Rhode Island is, in fact, taking some action currently to include area-specific management measures in their regulatory text. Is the

area required on the trap tag in the state of Rhode Island? Our understanding is that it is not, so that is a compliance issue.

In addition, the Plan Review Team's comments and recommendations are that the state of Rhode Island reference the most restrictive rule, which it has done so I will note that is an error, and that area-specific management measures be included in the state regulatory text for the available data, which would be Areas 1 through 6 and the Outer Cape. Any questions relative to the Rhode Island recommendations?

Connecticut, we looked for a reference to the most restrictive rule, and we noted that there was no reference to the most restrictive rule in the regulatory text. Again, looking to see what data was available, we could find that only federal data was all-inclusive of all of the permit holder elections.

Has the approach to specify area-specific management measures been utilized? In this case, no. Is the area required on the trap tags which are issued in the state of Connecticut? Yes, it is, so that is not a compliance issue.

As a result, the Plan Review Team is recommending that reference to the most restrictive rule be included in the regulatory text and that area-specific management measures be referenced for Areas 1 through 6 and the Outer Cape.

New York, looking specifically -- I just want to mention for New York's, specifically, many of you had contacted us and had raised at previous meetings an interest in getting an example to follow, and in previous meetings we had mentioned that we only had two states that we knew that had addressed it.

That would be New Hampshire and New York. Of all of the states that the Plan Review Team reviewed, New York's is so close to being perfect, it's really amazing. I just want to say that, from staff's perspective, it was very nice to have an example to look to be able to point to the board.

There's only in this situation one additional thing that needs to be done for New York to be clear of any compliance issues.

Specifically, there is reference to the most restrictive rule in Section 44.4.H.5 which deals with trap

allocations.

There is also reference to 44.5.F, and that deals with the minimum/maximum sizes and the possession limits that are identified for lobster. There is state data available as well as federal data.

In this situation, New York has partially addressed area-specific management measures because they have identified those specific area management measures for Areas 2, 3, 4 and 6.

The only area that was not covered for which data currently exists is Area 5. Are there any questions about the recommendations relative to New York?

Finally, New Jersey has also tried to take a stab at this issue. They have referenced the most restrictive rule in Section 7.25.14.13.F.1.

They have no state data which is all-inclusive available for these purposes. There is federal data available; therefore, they have partially addressed area-specific management measures because they do reference all management measures of all areas.

However, this is not specific to all management measures. It's just specific to minimum-maximum size; therefore, they also need to include some regulatory text relative to trap numbers and allocations.

The area is required on the trap tag and, therefore, the Plan Review Team's comments and/or recommendations are that the state of New Jersey reference -- again, they have done this -- reference the most restrictive rule, but the area-specific management measures be included for trap numbers and/or allocations for Areas 1 through 6 and the Outer Cape. Again, that's based upon the available data.

For the de minimis states, the Plan Review Team simply noted that de minimis are only bound by the coastwide management measures; therefore, in this situation, this review would not apply to de minimis states.

Are there any questions at all about the Plan Review Team's report?

CHAIRMAN LAPOINTE: Bruce, did you have a question?

MR. FREEMAN: Yes. I'm somewhat confused in that the commission's plan, so far as trap tags is concerned, differs from the federal plan.

As I understand your comments, Heather, the issue with the states is not effectively dealing with the trap numbers. In our instance, we see no need to go through and indicate the maximum traps per individual if, in fact, federal rules prevail.

I'm somewhat confused as to -- we see no need to simply go through and put in a regulation for maximum number of traps based on history when, in fact, we're trumped by the federal numbers of traps, which in many instances may be greater and in some instances less.

MS. STIRRATT: Just to respond to your comments, Bruce, I'm not sure I have an answer to that dilemma, but what I can offer is that the Plan Review Team, again, was looking for a standardized approach to coming back to the board and meeting the request of reviewing compliance on this issue.

If state data was available and it was all-inclusive and the state is including area information on trap tags, then the Plan Review Team certainly utilized that information as the higher priority to take preference.

If, in fact, the state data was not available, and states weren't collecting area information on their trap tags, then it became more of a difficult issue because we needed to have some permit holder election data on which to tell the states that they needed to cover these permitted areas in the regulatory text, and that was to be in compliance with the most restrictive rule.

It's almost a default is the best way to refer to it because it is the only data available in that circumstance.

MR. FREEMAN: Well, it still doesn't answer my question, and I'm somewhat confused. In our instance, we could essentially seek de minimis status because of our landings.

We have chosen not to do that because of the importance of the fishery to those people who are engaged in it. But, it is becoming an increased burden spending the time to put in regulations to cover all these contingencies. Perhaps, we need to go back and review whether we want to be de minimis or not.

MS. STIRRATT: One final comment. I understand that I didn't necessarily answer the question. I don't know that there is an answer to that question given the data that we're dealing with.

But one response that I can offer here, Bruce, is that these are the recommendations that we've provided primarily with the states' best interest in mind.

The alternative to this is that the states could just unilaterally decide around the table that they're going to implement all management areas. That's another alternative.

CHAIRMAN LAPOINTE: Other board questions or comments? John.

MR. JOHN I. NELSON: Well, Mr. Chairman, I plead guilty.

CHAIRMAN LAPOINTE: I was going to say you were guilty, too.

MR. NELSON: I know that we took a look at what the federal record was for people who had designated in areas, and that's why we came up with the one, two and three.

I suspect that we used a later date than perhaps what the PRT is looking at at this time, because I know there are differences between dates.

Our approach is going to be that we are sending a letter out with the applications next month to all of our lobstermen informing them about the restrictions for these various areas.

When I looked at it last time, I had one person I think that was in Area 4. God knows why he's in there, but we would certainly point out to him what his responsibilities are.

We had a number of calls from folks. When they found out that we were putting in the regulation for minimum sizes for these areas, they all came to us and said, "How can I get rid of this?"

I told them go check with the feds, and they checked with the feds and the feds will not let them eliminate that designation until the permit is renewed.

So they're basically stuck with it, even though they had

no intention on fishing in that area; they're not fishing in those areas; and they were just -- it's like most people up our way.

They saw that, well, there's an opportunity to check off something; and if they don't check it off, they're going to lose the ability to get there, so they went checking everything that they possibly could.

I think that will change substantially. But the other points of where the state is not fully in compliance, we'll take these -- if that's the will of the board, we'll certainly take these back home and put in the regulations that reflect that.

I suspect that since most states are in that situation, that probably we should just debate on what's the timeline that we look at for states to be able to put those types of regulations into place to fully be in compliance with the plan.

CHAIRMAN LAPOINTE: Other board comments? Bill.

MR. ADLER: Thank you, Mr. Chairman. I don't know where to put this into the realm of the most restrictive and where, at what meeting and whatever, but there is a problem with the most restrictive rule when it does come to the traps.

As this I think was brought out at a previous meeting, I think everybody understands and goes along with the most restrictive rule on just about every item in the lobster plan.

But, just to recall how it got confused in the trap section, the most restrictive rule was put in before one of the provisions of the plans, the historical participation trap plans came in in some of the areas.

As an example, using Area 1 and Area 3, Area 3 has a historical participation where you have to qualify for some traps. Area 1, for instance, does not. It has a flat trap number.

The idea was that if someone had fishing history in both of those particular areas, but only qualified for 200 traps in Area 3, the idea was not to limit him to 200 traps in both of those areas.

It was that you can only fish 200 traps in Area 3,

because that's all you qualified for in that area because of the history participation part of the plan.

And while you wouldn't be able to perhaps go over 800 by fishing the two areas, you could only fish 200 in Area 3, and probably in that case it would be like 600 in the other area or not to go over the 800, but that was the intention.

And then the way it fell out was that the most restrictive rule was put in for good reason, because of just about every other rule that works, and this got stuck in the mess. I don't know how to address fixing it, but I think that we should go into the mode of trying to fix this little glitch somehow.

I know we've got -- I don't know which cement mixer we put it into, whether amendments, addendums, final federal rules, whatever, but it does need to be fixed before someone gets stuck or hung in the balance there.

That is the problem of most restrictive rule when it comes to the trap side of things. I'm not talking size limits or anything like that. I don't know where to put that.

CHAIRMAN LAPOINTE: I think you're using -- the idea of the complexities of the most restrictive is valid. I think, in the case of Area 1 and 3, I just had Heather look -- the historical participation in Area 3 has a bottom floor of 1,200 traps.

So, in fact, if there was an Area 1 and 3 fisherman, they would be limited to 800 traps no matter where they fished, because of their Area 1 designation and not their Area 3 designation. But now having jumped over that, the issue is valid on other areas because it's quite complex.

MR. ADLER: Yes, so this is why maybe we need to maybe sit down -- not in this forum right here, but sit down and come up with how to fix this thing with trap historical participation and the trap most restrictive stuff and come back, perhaps, to see how we could iron this out, basically.

CHAIRMAN LAPOINTE: I think staff has slides that make recommendations state by state; and with the board's concurrence, we will roll through that and try to keep the pace going. Does that make sense?

MR. ADLER: However you want to do it, Mr. Chairman.

MS. STIRRATT: Okay, just to kind of bring us full circle here and get us to a point where we can make some decisions, again, taking this on a case-by-case basis.

With the state of Maine, there was really two primary compliance concerns, the first of which is that obviously based upon the Plan Review Team's review, there are compliance issues relative to implementation and enforcement of the most restrictive rule.

Specifically, we ask that the state address this in its regulatory text and that area-specific management measures be included to deal with Areas 1 through 5 and the Outer Cape.

The second compliance issue which came out as a result of our review is that the state of Maine is not requiring area-specific information on its trap tags, which is another requirement under Amendment 3.

CHAIRMAN LAPOINTE: Just responding for the state of Maine, I had told the board that we would have a package together for this meeting, and we're behind on that.

We have had staff discussions, and we are crafting regulations that do reference the most restrictive, and it will require area designation on the tags and address the other issues in this regard. David Borden.

MR. DAVID V.D. BORDEN: I was just going to say, "ditto" for the state of Rhode Island.

CHAIRMAN LAPOINTE: We also, it's worth noting, have a similar situation to what John Nelson referenced, where we have people listing all the areas but Area 6; and when the regulatory regime comes along and the notice saying that you have to fish the most restrictive, I suspect Maine's fishermen will shake out to Areas 1 and 3, perhaps a few in Area 2.

MS. STIRRATT: Okay, moving right along, for New Hampshire there was --

CHAIRMAN LAPOINTE: Bruce, question?

MR. FREEMAN: George, on the issue that was indicated both by Maine and by Rhode Island, the issue is -- again, once these people understand what they did when they originally applied and find out that checking all the boxes was not a great idea and these permits are renewed next time, I suspect you're going to find a very different situation.

Now my question is, is it the intent of the board to have states put regulations in specific to each of the areas or to those areas where their fishermen apply to fish?

CHAIRMAN LAPOINTE: I think the PRT said -- I mean, both approaches could be taken. If you reference all areas, you would be covering all your bases.

MR. FREEMAN: Okay.

CHAIRMAN LAPOINTE: And so that just depends on that state regulatory process. I've been working with staff to try to craft something that references the ASMFC plan and not the specific measures in those areas. My Attorney General's office tells me that's too vague, and so I suspect I will have to go to area-specific measures.

MR. FREEMAN: All right.

CHAIRMAN LAPOINTE: David Borden.

MR. BORDEN: Thank you, Mr. Chairman. To Bruce's point, though, the only way you're going to be able to make most restrictive work is if New Jersey or Rhode Island -- it doesn't make any difference -- has fishermen that fish in all six areas. They're going to have to adopt the regulations for all six areas.

CHAIRMAN LAPOINTE: Right, I think that's correct.

MR. BORDEN: If, when they review their permit list, their fishermen only fish in two areas, there's only a requirement to promulgate regulations for two areas.

CHAIRMAN LAPOINTE: Heather.

MS. STIRRATT: You're right on, David. And to that point, one of the things that I also want to raise is the caveat that is listed in the report -- I'm sure

many of you have read it -- is that under this current evaluation scheme which the Plan Review Team has outlined, every year the states would need to take a look at their permit holder elections and take the necessary action.

It's very likely that the area elections will go down in number by state as time goes on, so it may mean that you could alleviate some of the burden by just either leaving those regulations in your regulatory text or removing them, if appropriate.

So, you wouldn't have to add anything necessarily, but it is important for you all to recognize around the table that this is now going to have to be an annual review at the state level about your permit holder election to make sure that you've got regulations that will cover the most restrictive rule in its entirety.

CHAIRMAN LAPOINTE: And that you adjust your regulations so they're consistent with the area plans as they change through addenda.

MS. STIRRATT: Correct.

CHAIRMAN LAPOINTE: Other questions or comments before we move to New Hampshire? Heather.

MS. STIRRATT: Okay, New Hampshire had one compliance item, and it was specific to the most restrictive rule. Again, the recommendation is that the state address the most restrictive rule and outline area-specific management measures for Areas 1 through 5 and the Outer Cape, recognizing that they have taken a partial stab at this already. It's just refining the regulatory text to meet all of the area data which is available.

CHAIRMAN LAPOINTE: Any questions or comments about New Hampshire? Ritch.

MR. G. RITCHIE WHITE: As, John said, we will be taking care of it, but the timeline is important because we would like to be on the same page with everybody as to implementation.

CHAIRMAN LAPOINTE: Thank you. Other questions or comments? Heather, Massachusetts.

MS. STIRRATT: Massachusetts, again, just

one primary compliance issue, again related to the most restrictive rule. We ask that the area-specific management measures for Areas 1 through 3 and the Outer Cape be included.

CHAIRMAN LAPOINTE: Questions or comments? Seeing none, Rhode Island.

MS. STIRRATT: Again, Rhode Island, there were two compliance issues here, the first of which was the most restrictive rule, again, area-specific management measures for Areas 1 through 6 and the Outer Cape, as well as including area information on the trap tags.

CHAIRMAN LAPOINTE: Questions or comments? Connecticut.

MS. STIRRATT: Connecticut, the primary compliance issue here is the most restrictive rule. Address the most restrictive rule in the regulatory text and include area-specific management measures for Areas 1 through 6 and the Outer Cape.

CHAIRMAN LAPOINTE: Questions or comments? Ernie.

MR. ERNEST E. BECKWITH, JR.: Thank you, Mr. Chairman. The most restrictive rule regulations were put in place in June. They are currently on the books. The other issue, I really don't quite understand.

What we do is in our most restrictive rule we say that fishermen have to abide by the most restrictive management measures in any of the seven Atlantic States Marine Fisheries Commission Management Areas as specified in the management plan.

That's where we leave it. I don't know whether the PRT is asking us to include all of the management measures in our regs for all the other areas. Unless forced to do that, I would oppose doing that. It just clutters up our regs and really isn't necessary.

MS. STIRRATT: Actually, to that point, the PRT does feel it is necessary from an enforcement perspective primarily, but, again, many of you around the table have already sought legal counsel within your own states on this issue.

Certainly, legal counsel was involved in the Plan

Review Team's discussion from the federal perspective. It does appear to be an issue in that the states need to have area-specific management measures in their regulatory text in order to enforce something like this in a court of law.

Now, I would actually invite any of you who are sitting around the table who have had legal input from your state's perspective on this issue to advise the state of Connecticut, also.

MR. BECKWITH: Can I just follow up? I don't have the plan here in front of me, but I would assume that is specific in that plan, that we have to have all those area management measures in our regulations?

MS. STIRRATT: The plan is very specific. I think the question is that if you simply say that the most restrictive management measure applies, and an enforcement agent is out in the field and doesn't really know what those management measures are identified specifically based upon Connecticut's regulations, then that could become an issue. I would invite Bob or Harry, specifically, to speak on this issue as well.

MR. BECKWITH: If I could just follow up, what we have done is given all of our CO's a list of what all the management measures are in the other areas. That's the way we've handled it.

CHAIRMAN LAPOINTE: Question, Ernie, and has your AG's office cleared that as a method of operating? Do they clear your regulations?

MR. BECKWITH: The AG's office does clear our regs. They have not cleared this one yet, because we have two processes to put regs in place. We have the fast process, the emergency process, which we utilized to put these regs in place.

It is now going through the normal process, and it has to go to the Attorney General on a normal process. It did not the first time. We'll see what happens, but we have done this by reference for other situations.

CHAIRMAN LAPOINTE: Okay, I guess my sense is that if your AG's office is comfortable with that approach, and it becomes enforceable, that's sufficient for enforcement under our plan.

I mean, it's different than other states. I'm a little jealous about the AG's interpretation, but if it's enforceable, that's good for the commission. New

York.

MS. STIRRATT: For New York, again, my compliments to the state of New York for doing such a great job from the outset, having very little direction in this regard.

The only issue that's outstanding is just one area's management measures which were not identified in the state regulatory text and that was Area 5. We're just looking for implementation of area-specific text in that regard.

CHAIRMAN LAPOINTE: Gordon.

MR. COLVIN: You know, the truth is I'm not sure why we didn't put Area 5 in the rule, although I suspect very strongly that there are hardly any fishermen who designated Area 5.

If they did, they would not have designated it alone, so probably they're designating either 3 or 4 plus 5 and they're covered by 3 or 4, anyhow, under the terms of their permits. But I'll check on that and send the board a letter that lays out what the issue and the response is.

Just on this issue of regulatory clutter, Ernie is absolutely right. There is a regulatory clutter issue here. Bruce alluded to it earlier as well as the workload associated with it.

It isn't just putting this into place, it's having to attend to it and do the housekeeping to keep those sections of your regs that deal with management areas outside your state waters current as those regulations change for those areas over time.

I'm not sure where we're all going to go with this. I think at some point the board is going to want to step back and look at the big picture and see if the juice is worth the squeeze on this down the road, particularly once we get this shake-out and people really start designating only where they're fishing.

That may be a year or two off, but I would really hope the board will do that, because it's getting to the point where we look forward to having half the text in our lobster regulations relate to fisheries that are outside our state waters and maybe amount to less than 5 percent; less than 1 percent of our landings. We're going to have to get after that.

CHAIRMAN LAPOINTE: I've heard that same concern -- not concern but issue about having to look at this a year or two out voiced by a number of people. New Jersey.

MS. STIRRATT: New Jersey, the primary issue here, again, was the most restrictive rule. We, as the PRT, requested that the state implement management measures that are specific to Areas 1 through 5 and the Outer Cape.

CHAIRMAN LAPOINTE: Questions or comments? Bruce.

MR. FREEMAN: I think somebody must have put in Area 6, because this indicates 1 through 6 plus the Outer Cape. It appears when people signed up, they checked everything to follow over what happened on the federal permits on ground fish.

Whatever was on the list, check it, it didn't cost you anything.

We know people who did fish in Long Island now are back into New Jersey so six, certainly, is something -- my question is how do the other de minimis states deal with this issue? I mean, there's a possibility of people fishing several areas.

MS. STIRRATT: They were not required to deal with this issue, because they're only bound in the plan as a de minimis state to the coastwide requirements. The most restrictive rule does not fall in that section of the plan.

CHAIRMAN LAPOINTE: The question before the board is the timeline upon which we want to revisit this to see how people are coming into line. Do we want to do March or May -- February, excuse me, or May? Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. Since I think a lot of the renewals take place in the middle of the winter, would it be better to review this in May where some of the stuff has shaken out, and we have a better idea? Would that put anybody out of kilter, if we waited until the May meeting?

CHAIRMAN LAPOINTE: Board comments to revisit this in May to see how we're going? Joe Fessenden from the Law Enforcement Committee.

COLONEL JOE FESSENDEN: The federal permits, I think, are renewed May 1st, and I think the word has to get out to the industry. I do think, at least up our way, you can see people dropping a lot of these designations, because it's going to force them to take a larger minimum size lobster.

So, if the only time you can change that designation is when you renew your permit, I think we should get on it as far as taking care of that issue.

Because if you let may go by, we're talking another whole year of going through this whole process. I think we've got an opportunity right now to get the word out to the industry. We can probably get a lot of it squared away, so when they go to renew those federal permits, they may have most of them on board by May.

CHAIRMAN LAPOINTE: Bill.

MR. ADLER: Yes, I think I was right on what Joe was saying; get the word out to industry, have them shake it through, but I thought our discussion here was when are we going to return to this table? That's why I said May would be better than February.

CHAIRMAN LAPOINTE: Right.

MR. ADLER: That's was my thought.

CHAIRMAN LAPOINTE: Certainly, I know on the part of the state of Maine, we'd want to have that squared away so that in fact we can have some of this shaking out.

The second meeting is in June, sorry. Is there objection to revisiting this in May on the part of the board? Seeing none, next agenda item. Thank you, Heather, and thank you, Board.

MS. STIRRATT: Just as a follow up to the status of state compliance -- I realize that it is not listed on the agenda -- there is one other issue relative to compliance that should be raised.

You may recall that back in August at the 2002 meeting, this body discussed numerous compliance issues that were raised relative to the Commonwealth of Massachusetts.

It was at that time that the board had asked that Massachusetts begin to outline a plan of attack and provide this body with some plan of action by today's date.

I believe that just recently -- in fact, I just got a copy. I will admit I have not read this in its entirety, but there is a document which is dated November 15, 2002. It has been submitted on behalf of the Commonwealth, and I would defer to Paul Diodati to provide some direction.

MR. PAUL DIODATI: I don't believe it was "numerous" non-compliance issues. There were a few things that we were out of compliance with.

I did provide a memo to the board earlier in the week. I imagine that you all have it this morning. I believe it's very consistent with the action that was taken by the Policy Board back in August. I did repeat the action in here to refresh your memories.

It says, "immediately undertake a process to formalize and prioritize alternative management measures to achieve the egg production targets" -- and those are specific to Area 1 -- "and submit the alternatives to the management board at this November meeting".

We have begun that process. We have developed some alternative plans for state waters within the Commonwealth of Massachusetts. I described them briefly in this memo.

I've attached a copy of an article that was in a popular journal that is further evidence that we are working on this particular plan. I think I've met the requirements of the action that was taken last August.

CHAIRMAN LAPOINTE: I looked through the ISFMP Policy Board minutes, and there were two actions in regard to this; one that you submit the alternatives to the board at this meeting; and then, secondly, to submit a quantitative analysis of the alternatives to the Technical Committee by 7 January in the next year. Board questions or comments for Paul? David Borden.

MR. BORDEN: Thank you, Mr. Chairman. Paul, your biologists have been monitoring the v-notch compliance rate, and I realize the year isn't complete, but what is the rate you've determined so far?

MR. DIODATI: We haven't done that yet,

David. It says here, in the third paragraph of this memo, I did address that, and basically the sampling information for the past year hasn't all been compiled yet.

But we've taken some steps to get it done within the next couple of weeks, as I'm just as interested as you are, so we'll report back to the board on that as an aside.

MR. BORDEN: Okay, and then the second question relates to the last paragraph of the memo where you've estimated that 18,000 lobsters would be protected.

Is there an analysis that concluded that, that could be provided to the Technical Committee members, or is that going to be provided in the January submission?

MR. DIODATI: We can provide that at any time. It's a fairly recent analysis just to give -- it was just to put this measure in context for me what we're talking about, because it seems like the juice may not be worth the squeeze on this particular measure.

MR. BORDEN: Yes, I'd just offer that I think it would be helpful the earlier the Technical Committee members could see that analysis.

CHAIRMAN LAPOINTE: Other questions or comments for Massachusetts? Bob Baines.

MR. ROBERT BAINES: In regards to the last paragraph on the first page where it says that only a maximum of 18,000 lobsters would be protected by instituting this zero tolerance v-notch, I have a thistle box on my boat and I have documented over 10,000 v-notch lobsters in my catch this year.

To me, I think this is extremely misleading. To say that there are 23,000 female lobsters in the Gulf of Maine and only 18,000 would be protected when I, myself, have caught and returned over 10,000, I think that's very misleading to this board.

CHAIRMAN LAPOINTE: Without getting into the debate, because we do want to finish by 11:00, I mean, certainly, David's question and Bob's goes to the technical analysis done by your staff, and when that's provided, all of our Technical Committee members can look at it for evaluation because it will raise a lot of questions. Paul.

MR. DIODATI: Again, it's not 18,000 v-notch lobsters, it's 18,000 that are between the definition that we currently have in place versus the zero tolerance definition for Massachusetts fishermen in Area 1. I think we'll demonstrate that it's correct. Thank you.

CHAIRMAN LAPOINTE: Thank you. Other questions or comments? Pat White.

MR. PATTEN D. WHITE: Outside of the Massachusetts issue, on a compliance issue, Mr. Chairman, I was concerned about when the states are going to designate the increase in the vent size.

If there could be some discussion on a uniform time when that would happen, just for the fishermen's perspective, so that they know when it's to be implemented.

It's just during the year of 2003, but if all states do it at different times, then it's going to be hard for the industry to follow.

MS. STIRRATT: Pat has raised a good question. According to the latest addendum, Addendum III, there was a deadline of 2003 for the increase in the escapement size for all areas that have so desired to have one.

That being the case, as most of you are aware, all of the other management measures that are outlined in Addendum III have a July 1st deadline. Currently, the way that Addendum III is drafted, or the way it's finalized, there is no specific deadline.

A state would be at any time available to implement that requirement, so if the board wants to give a specific date, then that would require a change in the addendum by some fashion to clarify.

CHAIRMAN LAPOINTE: It seems to me that with -- I mean, without the clarification, the states can use their discretion on what's the convenience of both the regulatory process and their fishermen for that, whether if states switch on the first of June, it makes sense to switch on the first of June; if not, they can switch through the year as they see fit and be consistent with the plan. David.

MR. BORDEN: Thank you, Mr. Chairman. The only concern that I have is that particularly in the

federal zones, that the fishermen that are fishing side by side in the federal zone, if one uses the old vent size and the other one uses the new vent size, there's a significant difference in terms of the catch of legal lobsters that result, even under the same minimum size regulation because of the retention characteristics of the pot.

So, I think it should be uniform and I'm not exactly what the process is for implementing this, but I'd be perfectly happy to make a motion for July 1st so that everyone has to have the same regulations in place by a specific date.

CHAIRMAN LAPOINTE: Staff members, that would be a change to an addendum. You could look at it as a technical change, but it's a six-month technical change. How would we effect that?

MR. ROBERT E. BEAL: Well, I think if everyone -- it is kind of clarifying a broad range that's in an addendum right now, and if everyone on the board feels comfortable with it, I think it can be a state agreement just to do it that way.

It's sort of outside the commission process. If the states all kind of put their heads together and say we want to do it on June 1 or July 1, then states have the ability to do that if that's how they feel they should do it.

CHAIRMAN LAPOINTE: Right, absolutely. Are there states who don't intend to implement the vent change size on the first of June, I guess that's a -- first of July, I'm sorry, middle of the year in 2003? Pat.

MR. WHITE: We don't in Area 1.

CHAIRMAN LAPOINTE: No, because we don't have a vent size increase in Area 1.

MR. WHITE: Right, so the issue is between Area 1 and Area 3.

CHAIRMAN LAPOINTE: And it would be covered in the most restrictive rules that you and I will be finishing soon. But for other areas, that would be the question.

Seeing nobody not intending to implement by the first of July, is it a non-issue? Do we want to -- I mean, it strikes me that we should just go to the next issue. Yes,

Heather.

MS. STIRRATT: Okay, the FMP review has been included on your CD-ROM packet. It's also included at the back of the room. Each year the Plan Review Team conducts an annual FMP review which seeks to update known information regarding status of the FMP, status of the stock, status of assessment advice, status of research needs and monitoring, status of management measures and issues, current state-by-state implementation per compliance requirements and recommendations for research.

The PRT has completed this review and has updated all of the information with regard to the trawl survey trend analysis which is now being done annually by the Technical Committee, current landings which were available through 2001 only at the time that this was completed, research needs which have been reviewed by the Plan Review Team as well as the Technical Committee, and the management measures to date as well as the Plan Review Team recommendations.

At this point in time the PRT has prepared the FMP review for your review and approval during today's meeting.

CHAIRMAN LAPOINTE: Board members, comments or questions on the FMP review? Seeing none, do I see a motion for approval of the FMP review? Pat White made the motion, seconded by John Nelson. Questions or comments on the FMP review?

Any public comment on the FMP review? Seeing no questions or comments, we are ready for the question. Is there any objection to approval of the FMP review? Seeing none, the 2002 FMP review is approved by the board. Heather, next issue.

MS. STIRRATT: The Lobster Operating Procedures, you may recall from the August 2002 board meeting that staff was asked to draft a revised operating procedures consistent with the LCMT Subcommittee's recommendations on the LCMT process.

These recommendations were reviewed by the board at that time and approved. All substantive changes to the Lobster Operating Procedures can be found on Page 4 of the Lobster Operating Procedures document, which, again, was included in your packets.

There has been a new paragraph inserted on Page 4 consistent with these recommendations. The paragraph is entitled, "Process for Submitting Management Area Recommendations and/or Proposals." This is new text. Again, it is completely consistent with the board's desires, and at this point in time staff is simply asking that the board sign off on these revised procedures as drafted.

CHAIRMAN LAPOINTE: And we selected the process for submitting management areas at our last meeting, did we not?

MS. STIRRATT: We did.

CHAIRMAN LAPOINTE: Board members, questions or comments of Heather? Jerry Carvalho.

MR. JERRY CARVALHO: Thank you, Mr. Chairman. I'm not sure where we're going to go from here on this. Are we going to make a decision on how the LCMT's will submit their proposal?

CHAIRMAN LAPOINTE: We did that at the last meeting and what staff has done is prepare revised Lobster Operating Procedures that incorporate that.

Other questions or comments? Any questions or comments from the public on this? Seeing none, do we have a motion for approval of the changed, the amended operating procedures? Pat White.

MR. BECKWITH: Second.

CHAIRMAN LAPOINTE: Seconded by Ernie Beckwith. Any further discussion? Is there objection to approval of the operating procedures? Seeing none, they are approved.

The next agenda item is a discussion of tag issuance concerns and the two people listed on this are Gordon Colvin and Harry Mears. Do you want to lead off or we'll go right to Gordon?

Discussion of Tag Issuance Concerns

MR. COLVIN: Thank you. I believe my May 7 letter to Bob Ross has been distributed to the board. I'll simply refer you to the letter, which pretty much speaks for itself, and just a couple of brief comments.

The problem that we're suggesting exists relates to the fact that in some of the areas we have -- particularly Area 6, Area 4, we have a history-based system in which trap tag allocations may be below the number or above the number that are issued by the Natural Marine Fisheries Service at present to persons who designate federal areas, have federal permits and seek federal trap tag allocations.

So, in effect a person may have a federal permit and find themselves eligible for 880 trap tags under their federal permit and a number smaller than that under their permit from New York or Connecticut or New Jersey for the history-based allocation in state waters.

What happens under that situation is that they apply to NMFS for trap tags and they're given 880; and NMFS tells them that if they fish in state waters, they can't fish more than their state trap tag allocation.

Okay, so they have 880 trap tags, but they're told they can only fish so many of them in state waters. I don't think that works very well, and I don't think that's consistent with what the plan contemplates as the most restrictive.

I mean, we've been spending a lot of time this morning talking about "most restrictive" and yet we have this. The worst case scenario is outlined in my letter where we went through a trap tag buyback program where the state, at taxpayer expense, lobstermen sold back their state trap tag allocation, that cost the United States and state taxpayers \$14,400, thereby reducing their history-based state trap tag allocation to zero, applied for and received 880 federal trap tags and were told they couldn't fish them in state waters.

Now, you know, to me we've got a problem here and we ought to try to address this. We've been talking about stuff this morning in terms of most restrictive rule that, frankly, isn't very significant, and I think most of us feel that way.

At least that was certainly the sentiment I was feeling around the table. It isn't very significant in terms of the effect on the resource. This, however, is. This is a big difference.

And I don't know that it's going to go away if -- and maybe it will go away once we get to history-based allocations, but it has the potential not to unless we

really change the way we look at the most restrictive implementation between state and federal.

So, that's the issue and maybe Harry can lead us out of the woods on it, I don't know. But that's as far as I'm able to go with it at this moment in time.

CHAIRMAN LAPOINTE: Harry.

MR. HARRY MEARS: Thank you, Mr. Chairman. I don't think I can lead us out of the woods on this one. I think it's a very complex issue. I'll let my response, which is in the briefing material, serve as my perspective on some of the issues where I think Gordon is coming from, especially with regard to the hypothetical examples where, for example, under New York state law where under a NMFS grant the state bought back tags from an individual who in turn, to my understanding, then signs an acknowledgment that individual forever more cannot fish in Long Island Sound.

Part of the disconnect here -- and, again, this is a case where the devil is in the details -- the federal government licenses vessels. The state licenses individuals. This particular individual may have two vessels, one that fishes in Long Island Sound and also a vessel that fishes in federal waters of Area 2.

The other case scenario is where it's only one vessel and the catch-22 which I think is bothering Gordon here is that under state law that individual agreed to receive funding in return to surrendering their privilege to fish for lobster in Area 6.

The degree to which this is complicated by an individual that's both licensed under state law as an individual, licensed under federal law as a vessel owner, I do believe there are potential solutions, too, which can be either solved through a modification to federal regs where, for example, we would no longer designate Area 6 on federal lobster tags.

That has pros and cons. The pro is I think it would solve part of New York's dilemma. The con is for certain individuals they might have to buy double tags from the federal government and the state to fish in either Area 4, Area 5 or perhaps Area 3.

Again, the devil is in the details. Perhaps New York could consider legislation in combination with what

NMFS could partially accommodate through its own federal rulemaking. This is an issue which has been discussed on several occasions, several conference calls.

And I guess I'll let my response stand at that. Again, more of the specifics are in the briefing package in terms of the way I understand New York's dilemma. Thank you.

CHAIRMAN LAPOINTE: Pat White.

MR. WHITE: I should know the answer to this but I don't think I do. In Maine with Zone E, aren't we in the same kind of problem with that where it's a 600 trap limit but --

CHAIRMAN LAPOINTE: We are in that dilemma, if I might, in all of our zones because of the step-up process we have. In Maine, if I'm a beginning fisherman, I can start at 300 traps and build up 100 a year.

So if I'm a new fisherman and starting at 300 in any of the zones and I have a federal permit, I get 300 tags from the state and I'm supposed to fish at the most restrictive, and then you can get 500 federal tags.

Harry and I had a go-around about this a couple years ago. As I recall, one of the issues was the AG's office or the NOAA GC's office, I'm sorry, said that -- I'm probably not using the correct legal term -- under the equal treatment clause, those people could get 800 even if they couldn't fish them.

And they had the same kind of letter saying, "Dear George, Here's the 800 traps. You can only fish what's legally state or federal". So we're kind of in the same dilemma. Are other states in similar circumstances? Harry.

MR. MEARS: Yes, Mr. Chairman, just following up to your summary that this was an issue that first arose with dual state-federal permit holders in the state of Maine and in the first year, again from the briefing materials, it indicated during our first year of facing this situation, there were 41 dually permitted lobstermen who did request the difference between what state law would allow them to fish and the maximum of 880 which NMFS would otherwise authorize in federal waters.

That was in the year 2000. In the year 2001 that number, 41 permit holders, decreased to 19 and in the current year that number from 2001, 19, has decreased to our most recent accounting of 6. So, yes, it is a concern. Yes, it is a bump.

Yes, it is an undesirable type of issue where we have to address, as you indicated, the equity issue that would allow an individual to buy federal lobster tags and at the same time be told, however, consult your state regs and the more restrictive applies.

So I guess the bottom line here is that it started out as an issue of unknown proportion, and during the succeeding two years it has eventually gotten to a point -- and I don't know what your perspective might be on behalf of the state of Maine, but it certainly has been one where it has been recognized to now exist at a very low level.

CHAIRMAN LAPOINTE: Joe, go ahead.

COLONEL FESSENDEN: I just want to say that when this started up in Maine, we thought we were going to have a big problem with it. But, what the Permit Office did with NOAA, they notified law enforcement. We get regular updates on who gets these extra tags and what we have done is contact the fishermen and told them they can't use them.

And as a result, what's the sense of buying them if you can't use them? So that's why you've dropped from 41 down to whatever you said, 6. I really appreciate the Permit Office working with us and letting us know because it has worked very well for us.

CHAIRMAN LAPOINTE: So it's a manageable issue.

COLONEL FESSENDEN: It's working out.

CHAIRMAN LAPOINTE: We sent them a letter that first year telling them that they might make good Christmas tree rings if you click them all together and put them on a Christmas tree because that's the only way they could use them. Bruce Freeman.

MR. FREEMAN: George, in the commission's plan, the historical issue particularly for Areas 3, 4, and 5 come into play; and if the federal

management system meets the requirements of the state situation, this same situation will be more common.

For example, in Area 4 and 5 in New Jersey there are people who will get less than the 800 tags. There will be other people getting more. It could become more and more of a problem in more areas, depending on what the federal system does.

The problem, as stated, is a situation but my point is that can become more of a problem in almost every area depending on what the feds do.

CHAIRMAN LAPOINTE: Gordon Colvin.

MR. COLVIN: Yes, I mean, Harry's right. This is complex and the details are difficult to mentally surround and address, and we may want to have -- if we're going to continue to evaluate, as was suggested earlier, this entire most restrictive situation, I think this needs to be added to the charge of whoever is going to do that to work with those details.

But, you know, you think about it. There are a couple of issues that are bothersome. One relates to enforcement. In our situation it sounds a little different than the Maine situation because what happens is that the person who is the dual permit holder, so long as they have a federal permit, applies for and receives the federal trap tags, doesn't get trap tags from the state and is entitled to fish those trap tags.

Now, they're told, well, here's 880 trap tags, but you can only fish how many you're told you can fish by the state. The state has allocated 500. How in God's name does enforcement know when they counter trap tags in the water whether these are part of 500 that are being fished or 880 that are being fished? There's no way to address that under that circumstance.

The other element of it relates to, you know, what do we intend in this management program the most restrictive rule to accomplish? And I'm, frankly, a little puzzled about that question and always have been.

But if it's our intention that the most restrictive rule, when it comes to fishing effort, the amount of gear you can fish, to effectively apply anywhere a fisherman chooses to fish, then they should only be given the smallest number of trap tags that they qualify for in any area they declare an intent to fish in.

And isn't that what we've been talking about for half of this morning? And they shouldn't be given a higher number of traps and be told, okay, you can't fish 880 in state waters but you can fish them out here in Area 2 or 3, that's okay. Well, wait a minute.

I don't think that's what the most restrictive rule is intended to accomplish in this management program. And if we're trying to bring all the states into compliance with the most restrictive rule and clutter up our regulations, as we discussed earlier this morning, by next March or next May, then we've got to address this, too, because this is a more substantive issue in my mind than 95 percent of those state problems we talked about.

So, I don't think we can solve it today. It is incredibly complex, but I would like to see us institute some kind of a process perhaps involving the Plan Review Team and working with enforcement to lay this out and tee this up a little bit better for us and get something on the table that we can work with and resolve it.

CHAIRMAN LAPOINTE: Ernie Beckwith.

MR. BECKWITH: I can just offer what the state of Connecticut did to try to address, I think, similar problems. It does put more of a burden on the state. Obviously, we don't have as many federal permit holders as other states do, but essentially what we do is any Connecticut resident that wants to get a lobster tag, whether it's a state tag or a federal tag, makes application to the state of Connecticut annually, and he has to elect on that form what he wants to do.

So any decision as to how many tags that someone should be authorized to purchase is made by the state based on what the fisherman submits.

So it isn't two different agencies doing two different things, it's centralized in one point. And based on what the fishermen submit to us, then we submit data to the vendor which tells the vendor how many tags of what kind that fisherman can purchase, so it solved the problem for us. And we have an agreement with NMFS to do that.

CHAIRMAN LAPOINTE: Harry.

MR. MEARS: Just a final comment on that.

We do have memoranda of understanding with the states of Maine, New Hampshire, Massachusetts, and Connecticut and Rhode Island.

I would tend to think that the situations which Gordon just described for New York and perhaps to some extent some of the issues which Bruce described for New Jersey could in fact be accommodated through development or consideration given to an MOU as you just indicated, Ernie, whereby the state would issue the tags and we no longer have this dual confusion in terms of different agencies issuing tags for the same jurisdiction. Thank you.

CHAIRMAN LAPOINTE: Jerry Carvalho and then Bill Adler.

MR. CARVALHO: I don't know if I can offer any clarity to this, but from a fisherman's perspective I see two legal entities. One is a vessel with a property right and the other is a licensed individual.

The individual on the federal level doesn't apply for lobster trap tags, the vessel does. The licensed individual may also be the operator but he's not the legal entity, the vessel is. It has the property right.

So the vessel owns the trap tags and responsible for the trap tags as the legal entity in federal waters. That same individual can go to the state, and he is the legal entity; no matter which vessel he fishes with the exception of that federal vessel.

He could have a state vessel. But he as an individual has a right to a license and a set of trap tags. Now, the most restrictive of the two, what we're trying to do, and I think what some have tried to do, is say that this is the same person.

You have two separate legal entities. One is a property right belonging to the vessel, not the individual. Anyone can own that property right, but the property right gets exchanged, and it is the legal entity. We have one individual in the state of Rhode Island that has a federal vessel with the federal trap tags and fishes state waters as a person.

I hope we're not confusing the difference between the two. I can accept the difference between the two, but just because that same person happens to be the owner and the operator, he is not the legal entity in that case.

And I don't find that so complicated, and I think it can be made clearer and simpler. I accept that there's property rights in federal waters and person's rights in state waters. Thank you.

CHAIRMAN LAPOINTE: Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. I think Massachusetts, to my knowledge, has pretty much solved the problem where the state issues the tags as a cross-check so that we don't have the boat and the guy each getting an allocation.

There's a cross-check and I think the division has done a good job in doing that as they issue their order form to the individual, who may have a federal boat, so that they don't get a double dose of tags. I think that's worked.

We had problems the first year or two, but I think that's worked out pretty well and that may solve some of those problems. But, Mr. Chairman, what I wanted to do was to get back a little bit to maybe what Gordon was after -- and I agree with him, it can't be done here -- and that was on the most restrictive rules and the conversation I had had here with this board earlier about that particular part of the most restrictive rules.

And I wanted to reiterate the need to sit down, go over that problem, and try to work it through, and there should be an involvement of some of the board members, and not just the Plan Review Team or something like that, to go over what the problems are.

CHAIRMAN LAPOINTE: And my suggestion was going to be a takeoff of what Gordon had suggested, and that was to refer this issue as a start to the Plan Review Team.

They normally do their review in March, and so we would have it at the June meeting, where they could get a history of what has happened in the respective states, get Harry's perspective on how the MOU's and other people's on how MOU's have worked in a number of states, and move forward from there.

Heather suggests, and I think it's a good idea, that we bounce that by the Law Enforcement Committee as well. Does that make sense to get things started? I see some heads shaking. That is what we will do.

The next agenda item is the Law Enforcement Committee report, Joe Fessenden.

Law Enforcement Committee Report

COLONEL FESSENDEN: Well, in your packet you should find a letter to the board from the committee on a request that was made at the last meeting for us to look into the marketing system for non-commercial lobster license holders.

And the Law Enforcement Committee, actually we surveyed the group. Most of the states participated. We had a conference call. Mike Howard kind of lined that up for us, our coordinator. And as a result of those two, the survey and the conference call, Mike wrote this letter to the board basically in support of requiring Massachusetts to have trap tags in the non-commercial sector.

And to further follow that up a little bit, we met on Monday afternoon and reviewed this issue again with the full committee, and we actually voted on the issue. We voted 16 in favor and 1 abstained from supporting this requirement for trap tags for all non-commercial harvesters.

That's pretty much our position. We were asked to check that out and that's where we're at on that issue. And that's really all I have to report. Thank you.

EXECUTIVE DIRECTOR JOHN V. O'SHEA: Thank you, Colonel. Are there any questions or comments from the board to Colonel Fessenden? Okay, we'll move on to the next agenda item and that's the Advisory Panel report. Bob.

Advisory Panel Report

MR. BAINES: Thank you. The Lobster Advisory Panel has not met since the last board meeting. I have had some conversations with some of the panel members and I do have a few comments I'd like to share with you.

I'm going to read it so I apologize. The Lobster industry is slowly finishing a season that can be described as "very good" in some areas to "dismal" in others. Lobstermen have been very busy the last six months doing what they do to earn a living.

Now as the season slows or ends for most lobstermen, they will have the time to work on the issues that affect their future. They will be coming back to the meetings,

looking to address the issues that seriously affect their industry. Some will be coming just to argue.

As you all know very well, there are some difficult issues facing the lobster industry; escalating effort, enforcement issues, conservation equivalency, non-compliance, shell disease, most restrictive rule, stock assessment, and many other issues concerning the health of the lobster resource and the lobster industry.

I urge this board to move forward in a timely manner and deal with these difficult issues before it. I would also like to remind the board the lobster industry supports the work of the LCMT's and the Advisory Panel.

The Advisory Panel is an integral part of the ASMFC management process and the only voice from industry sitting at this table. I hope the Lobster Board will fully utilize the AP to help guide all management plans and decisions.

The Lobster Advisory Panel will be meeting next month to discuss many of these issues and other concerns of members of the Advisory Panel. I welcome your direction on any concerns you would like to see the Lobster Advisory Panel address. Thank you.

CHAIRMAN LAPOINTE: Thank you, Bob. Questions for Bob? When and where is the Advisory Panel meeting?

MR. BAINES: Tentatively the 11th of December in Providence. Is that what we decided?

Technical Committee Report

CHAIRMAN LAPOINTE: Thank you, Bob. Other questions or comments? Our next agenda item is the Technical Committee report, Bob Glenn. We had a motion. Can you bring that motion up?

The first item was the v-notch model discussion. A motion to table was taken at the last meeting. The motion was to move to approve the Technical Committee recommendation on the use of the model for evaluation and performance criteria for v-notching, and that was tabled.

Is there interest in bringing that off the table at this point? Can you review for us the substance of that just to bring the board back up to speed?

MR. ROBERT GLENN: Sure, I can. Starting back in May of last year, there was a motion to amend the Area 1 v-notching requirement made by the Commonwealth of Massachusetts. I won't read the specifics of that motion but, implicit within that amendment was a directive for the Technical Committee to develop a means by which to evaluate performance for the 100 percent mandatory v-notch requirement in Area 1.

Subsequent to that the TC met on several occasions and we tried to work on developing a model which would be able to measure compliance for the mandatory v-notching rule.

It was specific that this model was not to judge the efficacy of v-notching but rather just a simple means of which to be able to relate the observed proportion in the catch that we see sea sampling to an observed compliance rate.

And so what we did is basically developed a model. Essentially what the model does is examines the fate of a cohort of female lobsters destined to extrude eggs in the following nine-month period.

The purpose is to predict the expected proportions of v-notch lobsters in a population given a seasonal pattern of extrusion and a simultaneous fishery in which some fraction of the berried females are v-notched when captured.

This model, as I said, was reviewed on several occasions by the TC, and unfortunately we were not able to develop a consensus regarding the use of this model; however, we did develop a majority opinion and a minority opinion.

The majority of the TC endorses the proposed model as the appropriate tool to measure compliance with the mandatory v-notch measure adopted in Area 1 Lobster Management Area. They felt that the techniques employed within the model are appropriate and are applicable to both fisheries-dependent and fisheries-independent data.

The model allows the user to input a specific fishing mortality rate and v-notching rate to obtain an expected proportion of v-notched lobsters in the catch as well as solving over a range of combinations of these rates.

Using this tool, it is possible to determine the rate at which a lobster management area is v-notching at a given fishing mortality rate. And, as I said, the majority of the TC felt that this model is the appropriate tool to measure compliance.

The minority opinion within the TC did not endorse the proposed model as an appropriate tool. There were three primary concerns raised by the minority.

The first was that the predicted monthly proportions of v-notched lobsters in the model do not match up with the monthly proportion of v-notched lobsters observed in the Maine DMRC sampling.

The second concern was that the model predicted that the instantaneous fishing mortality rate of female lobsters would have to exceed 1.25, which is currently assumed to be 0.75, in order for the state of Maine to have v-notched 75 percent of egg-bearing female lobsters in Maine.

The third concern was that there was uncertainty whether or not the F's and capture rates in the v-notch model are directly comparable to the F's generated by DeLury and used in the EPR model. That's a summary the process that was involved with developing that model and now I'll give it back to you, George.

CHAIRMAN LAPOINTE: Board members?
Paul.

MR. DIODATI: Bob, were any other tools identified or this is the only tool that the Technical Committee has identified so far?

MR. GLENN: This was the only tool that the Technical Committee identified for v-notching so far, yes.

MR. DIODATI: Now, those that feel that the tool doesn't work -- I mean, I'm trying to think of the logic here -- does that suggest that the board adopted its principal management measure for Area 1 that cannot be evaluated if you go with the minority opinion? Is that what they're telling me?

MR. GLENN: What it's saying is that there was a minority on the TC that felt that the model was not an appropriate means to measure compliance to v-

notching. The minority did not put forth any alternative.

MR. DIODATI: So that, in a sense, is what they're telling me, that the board has adopted a measure for the most important Lobster Management Area on the coast that is not measurable; you cannot measure it's performance?

MR. GLENN: Well, I wouldn't characterize it like that. I can't say that those individuals who had a concern with that model felt that was the case. They just did not explore any alternative means. And, again, the majority of the committee did feel that this model was the appropriate tool to --

CHAIRMAN LAPOINTE: If I might, I certainly know the Technical Committee representative from the state of Maine was part of that minority opinion.

They were asked to evaluate this model and I know that Technical Committee member has put forth other methods of evaluating v-notch efficacy, but that wasn't the question posed to the Technical Committee. I don't think to say that we don't have anything in the absence of this model is correct, in my understanding.

MR. DIODATI: I don't recall the logic for tabling the motion that was made at the last meeting. It seems to me that -- okay.

MS. STIRRATT: The logic behind the tabling of this motion was that there were some concerns by some commissioners -- George included, I believe; Gordon was also included.

They wanted to go back and speak with their technical representatives on the Technical Committee to find out exactly where the concerns were, what was behind them and so on.

That was why this was deferred until this meeting, to provide the commissioners with the ability to go back and talk with their technical representatives.

CHAIRMAN LAPOINTE: Technical Committee representatives. That's only a punt because --

MR. COLVIN: About many things in the intervening months, Mr. Chairman.

CHAIRMAN LAPOINTE: Paul, I have not dug into -- I know Carl did have concerns and they were expressed in that minority report, and I've not chased that down with him.

MR. DIODATI: If it's appropriate, I'd like to reintroduce the original motion at this time to approve the TC's recommendation for use of the model until such time that a better tool becomes available.

CHAIRMAN LAPOINTE: The appropriate parliamentary procedure would be to take it off the table. Second to that motion: Ritch White from New Hampshire. Discussion? Seeing no discussion, public comment. Do our states need time to caucus? We'll give them a couple of minutes.

(Whereupon, a caucus was held.)

CHAIRMAN LAPOINTE: Are the states ready? Staff clarifies my lack of skills in parliamentary procedures. We're voting first on the motion to move it off the table and then we will go back to the main motion.

Again, this is a motion to remove from the table the original motion. All those in favor, signify by saying aye; opposed. The ayes have it.

Now back to the main motion and that is to approve the Technical Committee recommendation for the use of the model for evaluation of performance criteria for v-notching. Paul.

MR. DIODATI: I just want some clarification that by acceptance of this motion, it does not preclude the Technical Committee for developing further tools and bringing additional tools to the table. I don't want this motion to identify this model as the sole tool for measuring performance of this particular measure.

CHAIRMAN LAPOINTE: Right.

MR. DIODATI: There are other tools.

CHAIRMAN LAPOINTE: David.

MR. BORDEN: I was going to suggest the same thing, Mr. Chairman, that I think it's important to put that qualification into the motion. The other thing I

would suggest to Paul is that he perfect the motion and put a deadline on it.

This is our most important Lobster Management Area, and it's the key management measure in that area. If there's some kind of flaw in the methodology that's being used, we need to know that sooner rather than later. The way you do that is put a deadline on the Technical Committee to come back and articulate the different perspectives on this.

CHAIRMAN LAPOINTE: Paul.

MR. DIODATI: I would ask Bob, then, what would be an appropriate timeline for the Technical Committee to apply the model in a sensible fashion that gives the board a logical direction to proceed in?

MR. GLENN: What I would expect to happen with the model by the next meeting is that as this year's sea sampling information is completed for all states and we bring it to the table looking at the states that are in Area 1 -- New Hampshire, Maine and Massachusetts -- is that we would then take the observed proportion and relate it and then report back to the board relative to what the observed compliance rate is.

As far as proposing alternative methods to monitor compliance for this management measure, I would have to defer to the Technical Committee members who had problems with the model that we proposed, to see if they have alternatives that they would like to propose and what timeframes that they could get those alternatives done.

I would imagine I could report back to the board relative to this by the next board meeting in February.

CHAIRMAN LAPOINTE: Paul.

MR. DIODATI: I'd like to perfect the motion, Mr. Chairman, to include: Move to approve that the TC recommendation on the use of the model for evaluation of performance criteria for v-notching be conducted by the January board meeting and other models be reviewed -- hold on, that doesn't work.

CHAIRMAN LAPOINTE: It strikes me that what we want is an evaluation and presentation of other methods of evaluating --

MR. DIODATI: I think after v-notching up above there, a period is in order. And, the Technical Committee will provide results of this model use to the board at its February meeting, period. And, the Technical Committee will continue its work to identify and approve other models.

CHAIRMAN LAPOINTE: Bill Adler.

MR. ADLER: I don't know if I have a problem with some of that wording. There's no way they can come back by February with results on whether we're at some level because we have to look at how they're going to go and do their studies for the information that they're going to put into the model. I listened to the model discussion.

It didn't seem back to me for that model, and the fact that there should be other modes, models, whatever you want, to determine how the v-notching program is going, but there is no way they can have a definitive answer, I don't believe, by February.

Now if they could come in February and tell us how they're going to come in with the -- I mean, they've got to go get stuff to put into the model. That's the way it works, I think. And we won't accept two pieces of information put into a model and there's your answer. That's not good enough. So how much material is going to be available to put into the model? And if this motion says you're going to have an answer by February as to how the v-notching thing is going to go, it's impossible to have it by that time because there's not enough information in the model. Is that what that thing does?

CHAIRMAN LAPOINTE: I think we've got to separate the issues. People have already said they're going to report back on v-notching rates. We've got the model in place now with a majority and minority opinion, and it says that will be what we use and that the Technical Committee will look for alternatives, as well. Isn't that what the motion says, in essence?

MR. DIODATI: That's correct. It approves the use of this model. It asks them to use the model and provide us results at a future meeting, whichever that may be. I understood it was the next meeting. And it also asks the Technical Committee to continue its work to identify and review other appropriate models.

CHAIRMAN LAPOINTE: And I will just, I mean, raise the concern that I raised before that I know v-notching is what we're using in Area 1, but there are a number of tools being used in a number of areas that aren't directly evaluable by the standard charts we have.

And I think in fairness we need to ask the Technical Committee to develop models to chase those down, as well. We use in other areas trap reductions as surrogates for fishing mortality reductions, and I don't think we've had models to evaluate that exactly, as well. I don't want to see v-notching singled out in the future. Bob.

MR. GLENN: Just two points, George, one relative to what you just said. Just to make it clear to the Lobster Board, the v-notch model that we're discussing does not evaluate the efficacy or the effectiveness of v-notching as a management measure.

All it simply does is relates the observed proportion of v-notched lobsters in the catch to a compliance rate. It's basically a way to measure if lobsters are being notched at the rate that the plan says they were going to be notched at. I think that's an important distinction.

CHAIRMAN LAPOINTE: It is but secondarily it jumps right into my concern.

MR. GLENN: Right, understood. And the other point of clarification I guess I would ask Paul Diodati for, and the Lobster Board, as well, relative to that motion, just so I'm sure, what I'm expecting to go back to the Technical Committee with from this motion is to bring these discussions on the v-notching model back to the table, and implicit in that motion is to entertain other models.

Now, would it also be acceptable for the Technical Committee, in lieu of coming up with additional models, to have consensus on this model? I mean, say, if the concerns of the individuals in the minority are met relative to the technical aspects of that model, we can fix those or at least alleviate their concerns, would it be appropriate, then, for us to come back and re-report this model as being a consensus? Would that also --

MR. DIODATI: Yes.

CHAIRMAN LAPOINTE: That would be very appropriate. Bill Adler, did I see your hand?

MR. ADLER: So, one more time, the TC will provide the result of this model use at the February board meeting? That's the only part I'm questioning. In other words, is the TC going to come back in February and say that your rate of v-notching was some number?

MR. GLENN: Yes, we should be able to do that by the February meeting.

MR. ADLER: How could you?

MR. GLENN: How could we? Because we have a model that at least a majority of the TC is comfortable with. And we have not only historical data but we would expect to have results from the 2002 sea sampling season in -- November is the last month that we sample.

I know Massachusetts right now is working to push the issue and get all of our key punching done for the 2002 sea sampling data to have it available within the next month. And usually Maine and New Hampshire are also very forthcoming with getting their sea sampling information, so I think we'd have a grip on what the observed proportion in the catch was for 2002 by the next Lobster TC meeting. Then we would be able to plug that information into the model and come back with a compliance rate.

MR. ADLER: First of all, the mandate to start did not start until the plan was approved and put into place which is July. The v-notching was taking place in Massachusetts September, October and November by trap fishermen.

One sea sampling trip or whatever -- the sea sampling trip method is not adequate to put as the only ingredient into your model -- I have no problem with the model -- to determine what the v-notch rate is.

They were not even given a year to get to some level. They need the time to do it. A lobster has to be caught in order to be v-notched, and the v-notching was in full swing this fall. But if you're basing your model on a sweep by a net somewhere, that's not adequate and is not acceptable to the lobster industry.

So I'm okay with the model. I'm okay with the development of the other models, that's great. It's just that they need time to get something done, and you

can't use the small amount of material that you've got to make a judgment. That's my concern.

CHAIRMAN LAPOINTE: Bill's question is a good one; and for the maker of the motion, do we want to delay or do we see what the model shows at our next meeting and then -- I think Bill's concern is about a jump to conclusions about what the results of the model is, and how we follow thereafter I think is a valid question.

MR. DIODATI: Yes, I think that Bill's concerns are presupposing the actions of the board. I'd prefer that the Technical Committee move forward, provide the information, and qualify it in the proper way.

I think that the information should be qualified as to how the regulations and when they were in effect and where. And it doesn't suggest here the subsequent actions of the board, but I'm not expecting that we're going to have anything dramatic, but we need a baseline, I think, so I think this would be a good place to start.

CHAIRMAN LAPOINTE: Other comments before we take action on the motion? Pete Jensen.

MR. W. PETER JENSEN: Just a point of order. I think you should identify this as a substitute motion from the one that was taken off the table.

CHAIRMAN LAPOINTE: That is a good thought. We will call it a substitute motion. Who was the seconder? Did you second the amended motion or the substitute motion? Thank you. Public comment on the motion. Seeing none, we will take the question.

The substitute is move that we substitute the main motion, and the motion will now be to approve the Technical Committee recommendation on the use of the model for evaluation and performance criteria for v-notching.

The Technical Committee will provide the results of this model use at the February board meeting and will continue to work to develop other models. Made by Mr. Diodati; seconded by Ritch White.

Do we need time to caucus? Seeing no hands, all those in favor, raise their right hand, eight; opposed, like sign,

one; abstentions; null votes. The motion passes. Thank you.

Bob, the next agenda item is update on performance review criteria.

MR. GLENN: Okay, for the update on the performance review criteria, this was a work task given to the Lobster Technical Committee back in May, I believe.

And because we have limited time today, what I'm going to do is report on these three agenda items that were included as reports to the Lobster Board, and they should have been in the package you received.

What I'm going to do is give a brief overview of each of those reports. Unfortunately, I don't think I have the time to get into the details of all the analysis and information that was reviewed, but I'm going to try to give the highlights. And then after each presentation, I'll entertain questions relative to that particular report.

Okay, so the first report was the technical recommendations for real-time biological monitoring programs to evaluate the effectiveness of management measures in the lobster fishery.

The Lobster Technical Committee convened to discuss the development of monitoring programs that judge the effectiveness of all management measures in the current FMP.

The TC initiated a discussion to describe the expected outcomes of implementation of all management measures in Addendum III, including the benefits, the assumption of the benefits and the expected timeframe of benefits for each of the management measures.

These response assume that all management measures in the FMP are effective. During our discussions, to facilitate consistency with advice that was given to the Lobster Board, the TC discussed and agreed upon the meaning of several definitions within the work task.

What we did is we defined "real-time" which was specific in the work task, as the time consistent with the latest update to stock assessment and noted that time lags may be unavoidable due to data availability or uncertainty associated with the terminal year data.

We also noted that the TC cannot give advice based

upon data any later than that available during the last stock assessment. We also thought it was important to define "effectiveness."

We decided this was meeting the goals and objectives of Amendment 3 to the ASMFC Lobster Fisheries Management Plan over time and meeting the rebuilding schedule within the timeframe outlined in the FMP, which is F 10 percent by 2008.

And then we defined a "benefit" in these terms as increasing egg per recruit. So what the TC did was go through management measure by management measure and talk about what the benefits would be from that management measure, the expected timeframe that we'd expect to see those improvements in the resource and then also what we would use to evaluate each of the management measures.

What the Technical Committee found was that regardless of the management measures employed for resource benefits to be realized, there were two main points; that we the average size of females must increase given current egg production and rebuilding schedule.

That would be the first response in the resource regardless of what the management measure was. They all should do that. And the second was that F must be adjusted to meet the target in the plan. The TC noted concern that none of the management measures currently employed in the plan directly affect removal rates.

And, finally, there was a consensus among the TC that there is a need for annual calculation of mortality rates and an analysis of size structure trends to provide real-time responses to managers regarding the effectiveness of current management measures.

So, in a nutshell what the Technical Committee is saying is that the latest advice that we can give you has to be based on baseline conditions from the most recent stock assessment. And to facilitate giving more timeline information, we think it's necessary for the Technical Committee to update fishing mortality rates annually instead of baseline.

CHAIRMAN LAPOINTE: I have a question, Bob. If we do an annual update of fishing mortality rates and an analysis of size structure, we currently do

that by broad geographic areas, so we won't be able to evaluate the effectiveness of area-specific management measures within that, will we?

I mean, we'll be looking at the sum total in the Gulf of Maine, for instance, as opposed to how Area 1 versus Area 2 versus Area 3 components might be working.

MR. GLENN: Yes, that's a difficult question, George, because as we know, the division lines for management areas don't meet up with the stock definition lines but, nonetheless, in assessing a particular management area, to give you up-to-date advice, we need to have baseline information, and that baseline information would be a fishing mortality rate that would be inherent in that area.

So if we had those on an annual basis, we would be able to set those baselines and then run the area-specific management measures through the EPR model based on current baseline information.

CHAIRMAN LAPOINTE: Questions? Paul and then Bill Adler.

MR. DIODATI: Bob, what are the F targets in the plan? It says that "F must be adjusted or lowered to meet the target in the plan." Will you refresh my memory on that?

MR. GLENN: Yes, the F target in the plan is relative to reaching F 10 percent, and I believe during the last assessment -- I would have to look it up, but I believe the F target for the Gulf of Maine would have been 0.34. And for the other two stock units, I don't know off the top of my head, but I could look those up for you. I don't remember what they are.

MR. DIODATI: And none of the existing plans do that right now? None of the existing plans are lowering the removal rates?

MR. GLENN: None of the existing plans have -- none of the management measures in the existing plans have measures that directly affect removal rates relative to lowering fishing mortality.

CHAIRMAN LAPOINTE: Bill Adler.

MR. ADLER: I have a couple of things here, Bob. It says that none of the management measures currently employed affect removal rates. I assume

"removal rates" means removal of lobsters from the ocean?

MR. GLENN: Yes.

MR. ADLER: Okay. Now, we have rules in this management plan that raises gauges, and I would assume that means that the smaller lobsters we could take or should have taken or would have taken can't be taken, so I would assume that would mean that they're not removed.

If a lobster is v-notched, once the eggs leave and the v-notch is still there, that lobster can't be removed. The five-inch maximum rule I would assume -- and I know with tears in my eyes I've thrown some over when I caught them. I didn't remove it.

And the vent increase, which I don't think the industry gets sufficient coverage for, but the vent increase does its thing but also the current vent, 15/16ths vent, allows keepers to get out. I've seen them go right through the vent.

So we've got those type of things in this plan, which I think we do need time to let them work, but, I mean, I think all of those have to do with removal rates, and I don't understand how they don't affect removal rates, and yet all those things did affect removal rates.

And even the Technical Committee, when the plans went through the system, said that they did their thing. The other thing is I think you did mention that you had three stocks, and one of the minimum gauge size, the concern was different minimum sizes across the areas. And, okay, that I would understand except the biological study indicates that there's three stocks not one.

I would think that under that minimum gauge size discussion there, you're assuming there's one stock so that particular -- those are the things I have a problem with.

I guess with the gear removal and all I just mentioned -- not gear removal -- removal rates, that all of those things were designed to leave lobsters in the water for a longer period of time.

MR. GLENN: That's correct, Bill, and I understand your concern. There needs to be a

differentiation here relative to removal rates. When we speak of removal rates, we're talking about management measures that affect fishing mortality or lower fishing mortality.

All of the management measures that you spoke of are effective at increasing egg production. Gauge increases, maximum size, they do increase egg production. The problem is that they do not lower or necessarily halt fishing mortality rates. They only delay them.

CHAIRMAN LAPOINTE: Other questions or comments? I mean, it's worth mentioning. I think it's kind of obvious that the reason we've done that is because the egg per recruit has been the standard for measuring the effectiveness of the plan and fishing mortality hasn't been. So the inclusion of fishing mortality benchmarks is a major and substantive change that the board hasn't discussed.

MR. GLENN: Right. I think the primary concern here by the TC -- and I'll elaborate a little more -- is that even with all of the management measures that we have currently in place that show each of our management areas reaching F 10 percent, those were all based on the fact that fishing mortality rates will remain constant. Our concern was that there was nothing in any of the plans that ensured that fishing mortality rates would remain constant.

CHAIRMAN LAPOINTE: Other board questions or comments? I'm mindful of the fact that we've got 50 minutes to complete our agenda. Other questions or comments? Seeing none we'll jump to our next agenda item.

MR. GLENN: Okay, the next agenda item was technical analysis of the chronology and spatial extent of the Area 2 stock declines. This report out of the three was the most lengthy, and in it there are detailed descriptions of fisheries-dependent and independent information that the TC reviewed, as well as landings information.

Those are too voluminous to go through a complete presentation of all those, so I'll give you the summary of what that is and then certainly would entertain any questions relative to the specifics of the decline we're seeing.

The Lobster Board directed the TC to advise the board on the magnitude of stock declines at the last meeting, so the Technical Committee convened and reviewed trawl survey, sea sampling, catch-per-unit effort trends, and landings trends for Area 2.

Without exception, substantial declining trends were observed in all fisheries-dependent and fisheries-independent indices examined, as well as in commercial lobster landings for Area 2.

The information that we reviewed was from the states of Massachusetts and Rhode Island, which compose 99 percent of Area 2. There is only limited participation in Area 2 from Connecticut and some from New York, potentially.

The observed decline in these indices began in the mid-1990s and began to precipitously drop -- it looks to be between 1996 and '97 when the drop really started in trawl survey indices, as well as catch-per-unit effort indices and landings really began to drop like a stone in 1997. And currently they are at or close to time-series lows in 2001.

After reviewing all this information, the TC came up with a consensus that the current overfishing definition, F 10 percent, in combination with the proposed management measures, is not sufficient to remedy the stock declines observed in Area 2.

The Technical Committee recommends that we rebuild spawning stock biomass in Area 2 as soon as possible, and the three principal ways of doing this is to reduce fishing mortality in Area 2, task the LCMT-2 to develop a plan that immediately reduces system-wide effective effort to levels that are consistent with rebuilding SSB.

Although the exact levels of the reduction are yet undefined, the reduction should begin while the Model Development Subcommittee determines those levels.

And, C, the Technical Committee felt that it would be important to develop a control rule that incorporates both F-based and biomass-based reference points to offer better management advice to respond to varying stock conditions.

CHAIRMAN LAPOINTE: Comments or questions to Bob? David Borden.

MR. BORDEN: Yes, thank you, Mr. Chairman. I think this is a really excellent presentation by the Technical Committee, lots of facts and it's very easy to utilize the material. I've got one question on Page 7.

The Area 2 catch per trap haul from the sea sampling, I guess I'm just curious as to how the Technical Committee would explain the divergent trends between the Rhode Island data and the Massachusetts data, given the fact that they're both taking place in Area 2. How do you explain that?

MR. GLENN: Yes, we had a lot of discussion about this at the TC meeting. What we did to examine why this difference would be is to look at the spatial trends of sea-sampling information that we have.

And one thing that became apparent is in Rhode Island the information that they collect came from the same areas over the entire time series, so these catch rates are, you know, relatable to each other.

In Massachusetts, because specifically in Buzzard's Bay, which is one of the largest portions Area 2 fishermen fish in Massachusetts, that particular embayment, the stock has declined to the point where it's almost -- there aren't really any fishing activities going on for lobster there at all so the state of Massachusetts is unable to get sea-sampling information from that area.

And to maintain sea-sampling information from Area 2 in general, we've stayed with the same fishermen, but those fishermen now are fishing south of No Man's, well out into Area 2 waters so it's more of an offshore area or an offshore portion of Area 2, so those catch rates of legal-sized lobsters, we would expect those to increase when you shift from a heavily exploited inshore area to a less exploited offshore area, that would be typical.

So I don't think it reflects that we're seeing an overall increase in the legal catch-per-unit effort of lobsters in Massachusetts. It just reflects that the people we're sampling with to maintain their catch rates are now fishing offshore. The inshore areas where we used to get information from, we just can't get any information because there isn't that fishing activity.

MR. BORDEN: Yes, I'd just offer a personal comment. Since I fish a lot, recreationally fish in this area, it's stark. There's no other way to characterize it.

The decline in the amount of gear in the inshore areas, areas that you typically would, like Brown's Ledge, the mouth of Buzzard's Bay, where you would typically cross the area going to a bluefish fishing spot or whatever, there used to be thousands and thousands of pots. There's virtually nothing there. It's totally amazing.

Now, on the recommendations, I have a slight problem with the recommendations as I don't think they necessarily go as far as they should, and I think that's something that the board should take up.

I mean, one of the problems with these recommendations, if we were in fact simply to endorse this concept, task the Area 2 LCMT to come back with further recommendations, what would ensue is a major debate about, well, do we need to reduce fishing mortality 1 percent, 5 percent, 2 percent, you know, 10 percent, 20 percent? That's going to be a fairly divisive issue at the Area 2 LCMT meeting.

CHAIRMAN LAPOINTE: I was going to raise a similar question. It says that you need to reduce effort to rebuild the SSB beginning now. People need a target to chase after. You say you realize the model is going to take time, but you need an interim target. I've been dealing with the Grand Manan Fishery in Canada where they limit themselves to 375 traps and a six-month season.

They have the same fishing mortality rate we have in Maine, and so it strikes me that to achieve real reductions in F to rebuild your spawning stock biomass, you're going to be talking about incredibly significant reductions in F. Have you guys talked about a target?

MR. GLENN: We have not talked about a specific target. I think what we wanted to convey to the Lobster Board was a sense of urgency about the status of this stock in Area 2 right now.

I think that's why our recommendation was to move forward with a system-wide reduction in effective effort, even without having a target. I just think we did that so that we would convey the sense of urgency to the Lobster Board of how stark the conditions are in

Area 2.

CHAIRMAN LAPOINTE: All right. I had David Borden and then Paul.

MR. BORDEN: Yes, my suggestion here, Mr. Chairman, is that this really is an area-specific concern and it would probably be appropriate to convene a subcommittee meeting of the commissioners from this specific area to develop a very defined objective -- and I'm not advocating this. I'm just throwing it out as an example --for instance, to lower fishing mortality down to the target level within two years or one year or whatever, you know, we come up with.

Then the LCMT's know what they have to do, and then you get a standard that the Technical Committee can evaluate those LCMT proposals by to see whether or not they have the technical merits required to correct the situation.

And while I have the mike, I would just note, once again, this is a situation that has developed over a long period of time. We attempted to avoid this situation or a number of us had talked about the need to implement conservation measures during a time of increasing abundance; and, low and behold, here we are talking about fairly draconian restrictions on the fishery during a time where you've got declining abundance, which is absolutely not the time to do it. It's going to have a huge negative impact on the industry, but my own view is we have to do it.

CHAIRMAN LAPOINTE: Jerry Carvalho and then Ernie.

MR. CARVALHO: Bob, in Figure 7 you explained that the sea sampling took place, and there were some changes made. Wouldn't it be more appropriate to put a separate chart to show that the changes have taken place and why?

I mean, if we went by the consistency of what we did before, in fact, we'd have a bottom-out line and that would reflect actually what happened in that area and the sea sampling in that area.

That, to me would reflect more of the truth. A separate chart would reflect the changes that are being made in order to continue the sampling program.

MR. GLENN: Yes, at the Technical Committee meeting I presented a bunch of GIS maps looking at the distribution of traps that we sampled over the last ten years, and in examining those maps, it's very obvious where we used to sample is kind of bay-wide in Buzzard's Bay, we no longer do. All our sampling is basically limited to the area outside of the mouth of Buzzard's Bay in a more offshore area. I think that's telltale, and generally the reason why we see the Massachusetts catch-per-unit effort of legals going up in that timeframe.

CHAIRMAN LAPOINTE: It strikes me that should the board take action to get, first, the subcommittee together and the LCMT, how that information is presented to people is going to be incredibly important and so your point is well taken in that regard.

We shouldn't debate that today. We should get a sense of the board, if they want to move forward with David's proposal or some other. Paul.

MR. DIODATI: Right now I tend to support David's motion or suggestion, but I just need to clarify that previous to this I think you indicated, Bob, that the F rate associated with F 10 was about 0.34, 0.35, something in that.

MR. GLENN: Yes, that was for the Gulf of Maine. This would be in the South of Cape Cod/Long Island Sound stock unit. So because 90 percent or better of the legal size female are sexually mature in that stock unit, they get a large portion of their egg production on sub-legal size animals so their target F's would be slightly higher. They could handle a higher F. I don't know -- without having the stock assessment in front of me, I don't remember what those, the current F target is in that.

MR. DIODATI: But it is higher than the --

MR. GLENN: It is higher than 0.34. Heather just found it; it's 0.84.

MR. DIODATI: Point 84 to be equivalent with the F 10?

MR. GLENN: F 10 percent in that stock unit.

MR. DIODATI: All right. But what you're recommending here obviously is something less than that in order to recover the resource?

MR. GLENN: Yes.

MR. DIODATI: And as a process question, does the current plan have flexibility to lower the F rate in any area below the F 10 level or do we need an addendum to do that?

CHAIRMAN LAPOINTE: We've got a couple of things. States can be more conservative than what's in the plan. We also have emergency provisions allowed by the charter to take action. I had Ernie and then I'll go with Bill and David and Gil Pope. Any hands over here that I'm ignoring? Gordon and Harry.

MR. BECKWITH: Thank you, Mr. Chairman. I've got a question and I've got a few comments. Is there any speculation as to why landings and the stock size have plummeted in Area 2?

MR. GLENN: Well, to answer your question simply, yes. There is a lot of speculation, but unfortunately I don't think we have any smoking gun. We talked about the increase in water temperatures that we've seen in the last decade.

It's been the warmest decade recorded in history in that area. And specifically in this last summer we saw extremely abnormally high temperatures and I don't think that's helping.

Also, there was quite a large outbreak of shell disease in that area, although we've not been able to relate that specifically to lobster deaths and we've not seen dead lobsters coming up in traps. That was one other thing.

And then the other thing that we noted is that the fishing mortality rate in that stock unit had been above the target level for quite a long time. And I think the resource, it's finally catching up with it.

MR. BECKWITH: Thank you. I think you're seeing in Area 2 what we have experienced in Area 6 and are still experiencing. We've been doing some more work, obviously, in addition to all the standard research that's being done with the disaster money, but our staff is looking into some other issues, too.

Vic and Penny have been working on looking at natural mortality, and they've got a model that shows that natural mortality has really dramatically increased in Long Island Sound.

It also shows that there are -- using the higher natural mortality rates, and, as you know in the assessments we use a constant M value in there, but it shows that our fishing mortality rates in Long Island Sound are really quite low now because no one is fishing, and essentially what we're hearing for Area 2.

And as I was listening to some of the issues and how to address the problem, it appears to me -- I know in Area 6 the fishing mortality rate is low now, and it appears in Area 2 it is low. I don't know where it is at now, but it's a very difficult situation.

I think that if you move forth with significant restrictions on the fishery with the intent of bringing F down, well, maybe F is already down, and I think then the issue becomes how do you keep F low? I just wanted to pass that along to you because that's what we're seeing happening in Long Island Sound.

The other thing is that because I think what we're seeing and you're seeing are similar, that there should be a coordination definitely between the Long Island Sound Steering Committee, look at the kinds of research we're doing, some of the findings that we have so far, so you can benefit from that.

We have also -- and, Gordon, if he wants, can talk about this better than I can, but New York has a new pathologist. I think they have a new pathology lab over there. Their pathologist is doing some interesting work over there, and it's really scary. It's really scary.

Bob had mentioned temperature. And there appears to be, at least at this point, a tentative link between temperature and some of the problems that lobsters are having, at least the lobsters in Long Island Sound. A lot of them, to use the term of the pathologists, are "loaded with kidney stones."

The gland that they use to excrete, which is similar to a kidney, has got all these calcium deposits in it, and also the lobsters try to excrete this through their gills; and if you look at the gills, the gills have all these calcium deposits in them.

Essentially the lobsters cannot take oxygen out of the water and they essentially end up just burning themselves out, and it's a very interesting theory. He also presented some temperature data for Long Island Sound, and it's absolutely scary.

There was a very long period of time this summer time when the bottom temperature in the Sound was over 21 degrees C and very large areas where it was over 23 degrees C, and lobsters start having significant problems at about 20.6, so temperature is a real major issue.

But, anyway, just to sum it up, I think that we should coordinate, perhaps establish a liaison-type process or person between what's going on in Long Island Sound with our Steering Committee and our research and Area 2.

CHAIRMAN LAPOINTE: In the interest of time, the Chair is going to ask people, rather than debating the issue on what might cause it and might not, trying to address the course of action that David has proposed or some other and trying to get a subgroup of this board together and subsequently getting the LCMT together in, I would suspect, a fairly short amount of time, and not a long one.

Are there suggestions or comments along that line so we can try to finish by 11:00, because we still have some other agenda items? Bill.

MR. ADLER: Thank you. Yes, I think that's the right approach to take now is what Dave brought up here, have this little meeting and then get the LCMT's in and talk it over there. I think that's the best way to move ahead on that.

CHAIRMAN LAPOINTE: So the suggestion would be to have a subcommittee of the board to get together made up of Area 2 states, and that would be Massachusetts, Rhode Island, Connecticut, New York, to get together as quickly as possible, and then to get the LCMT for Area 2 together to -- I mean, first, let people absorb this information and propose a course of action.

And would that all be done in time to report back at the February meeting. What's the sense of that course of action and comments on that proposal? Gordon.

MR. COLVIN: I think that's the way to go. And, you know, Ernie said 99 percent of what I was going to say. Because of hopefully the insight that Area 6 can shed on this maybe a little bit, I would like to see a liaison between the Area 6 folks -- New York, Connecticut and our LCMT -- and what has been discussed for Area 2.

I think that can be done. I'm not sure that you're going to make a lot of headway on this as early as February or March. It may take longer. I think it will.

And the other thing I want to say is because of what we've observed, I would be very reluctant to march this right into a process of developing an addendum or an amendment that has regulatory compliance related stuff. And please think hard about what Ernie said; and buy a lot of thermometers.

CHAIRMAN LAPOINTE: Harry, and then David.

MR. MEARS: Yes, thank you, Mr. Chairman. In view of the urgency being given to this task, there is one particular issue that concerns me. One has to do with Bob's earlier statement from I believe the initial report which concluded that none of the management measures in place affect removals and that alternate targets or management measures need to be considered in the mix in terms of going toward an SSB type of target.

This recommendation we have here on the screen is similar; and it seems to me that before we meet with the LCMT and especially amongst ourselves, we need to know how to hook those two findings together; one being that none of the management measures on the books seems to impact going in the direction we need to achieve management goals; and, secondly, we need to do something immediately, which leads to the question what types of tools or what types of options are there to get us in the direction where we need to be going? Thank you.

CHAIRMAN LAPOINTE: David Borden.

MR. BORDEN: Thank you, Mr. Chairman, I'll try to be very brief. I'd just like to go back to Ernie. Ernie made a number of very excellent points, and that's exactly what this subcommittee has to get into.

I mean, what I would envision is a discussion of is F 10 percent adequate; and, two, how fast do you get there if it is adequate? And if it is inadequate, then what should we be going for? F 15 percent or whatever, over what timeframe?

And the committee has to -- the key ingredient that I would argue for is whatever strategy we put forth can't get into one of these allocation battles that ends up in a protracted discussion that goes on for years of -- and I won't mention specifics but we've all been through it.

What we need is something that's going to cut mortality and cut it right across the specter and avoid some of those types of arguments, so the sooner the better.

CHAIRMAN LAPOINTE: Do we need any more direction from the board than that? So those states will get together, discuss that issue and my sense is discuss some short-term issues, what we do now, and then the longer-term issues because the incorporation of the fishing mortality targets into the plan is going to take longer than you guys want to take, I suspect.

And then after you've had an initial meeting or two, then getting the LCMT together to start the education process with them and get them rolling as well. Harry, and then David.

MR. MEARS: Yes, Mr. Chairman, the National Marine Fisheries Service would like to be part of that discussion.

CHAIRMAN LAPOINTE: And we'd like you to be part of that, absolutely. David.

MR. BORDEN: Very quickly, Mr. Chairman. I think it's important -- you know when we talked about reporting back in February, I think it's important to do that, but I don't have any expectation that the commissioners from the four states are necessarily going to be able to do everything that they need to do in terms of defining --

CHAIRMAN LAPOINTE: It would just be a progress report; and because of the nature of the discussion, probably how well kevlar works in a public meeting because, I mean, those are going to be incredibly difficult discussions.

Further discussion on Area 2? Thank you. And, again, I want to second David's kudos to the Technical Committee for a great report on Area 2. One last issue, Bob?

MR. GLENN: Yes, one last issue. The last issue was the technical analysis of biological implications resulting from delays in Lobster Addendum III implementation.

The Lobster Management Board directed the Lobster TC to look into the Plan Review Team's recommendation regarding board consideration of implications of delays in Addendum III, given goals and objectives of the fisheries management plan as well as intent to meet the egg rebuilding schedule by 2008.

At the last TC meeting, we discussed this and a summary of the discussion is as follows. There was a consensus among the TC that there are two ways of viewing the current rebuilding schedule. The first is reaching percent maximum spawning potential-- in this case F 10 percent goals -- at points in the timeframe established.

The second way is having management measures in place by a point in the timeframe established that will eventually result in a percent MSP goal. This is essentially the definition of the starting point of rebuilding.

Given the response of the resource to the change in management measures proposed, it is likely that the time necessary to reach the related percent MSP goal would be on the order of one to two generations or approximately 15 years.

Based on this, the TC reiterates its belief that the management measures in all areas will not achieve the goals by the first definition alone; and in terms of the second definition, delays in implementation would simply result in an equivalent delay in the starting point of rebuilding.

CHAIRMAN LAPOINTE: Questions or comments? In summary, yes, the delay affects achieving our goals but if we try to redefine the targets, it will cause further delay?

MR. GLENN: Yes. In summary, the bottom line is that the current FMP, the eight-year rebuilding

schedule, is I think -- all the management measures will be in place to work towards getting towards F 10 percent, but because of lobster biology and the fact that it would take a few generations for these to take effect, we would not expect to see the benefits by the end of 2008.

CHAIRMAN LAPOINTE: Questions or comments for Bob? Thank you very much, Bob. The next discussion, Item Number 9, is issues for inclusion on Addendum IV. Heather.

Discussion of Issues for Inclusion in Addendum IV

MS. STIRRATT: I will be extremely brief. You should have all received in your mailing packets a very short, half-page memo. During the August 2002 meeting week, the Lobster Board discussed the need to continue to keep discussions open pertaining to transferability and specifically items for inclusion in Draft Addendum IV.

The board requested at that time that staff work with the board chair to devise a forum for continuing these discussions. As such, staff has drafted a short memo. Again, it's dated October 16, 2002, which outlines a proposal to organize two regional working groups of ASMFC commissioners.

This would be from Maine through Rhode Island; and then the second regional group, from Connecticut through North Carolina. The idea is that we would be holding a half-day discussion forum with the commissioners from these two regions during January and February 2003 to further explore transferability as a management tool.

The materials for review and consideration during these working sessions would include the transferability issue paper, transferability workshop proceedings, which, by the way, I have completed.

I am going to hand them off to Carrie today. Hopefully, they will be published at a date that is concurrent or at least admissible with the budgeting situation of the commission for the rest of the fiscal year.

And, in addition to that, all of the information that was compiled for the August transferability workshop would be available as well. Summaries of these two working group sessions would then be provided to

board members for consideration during the February meeting week.

And just as an ancillary note on this topic, as Gordon has already alluded to, you know, with this new information about Area 2 stock declines and certainly the concern which surrounds those, it is advisable to the board to proceed with caution in this regard relative to entering quickly into another addendum or another framework adjustment.

But certainly it is also worth noting that we do have LCMT's that are currently in the process of revising proposals that were submitted even earlier this year for review by this body, and those could be received by staff as early as later this winter.

So it is something that we do need to keep discussions open on and certainly I think this proposal will go a long way towards doing that.

CHAIRMAN LAPOINTE: I'll just add that the state of Maine has a lot of questions about transferability, and this struck me both as the chair and as a commissioner from Maine as a way of keeping those discussions going so that when ideas about transferability come up, we will have refined our respective views on how, if it's appropriate and if it is appropriate, how it would be implemented. Board questions or comments? Gerry.

MR. CARVALHO: Thank you, Mr. Chairman. Is it more appropriate to group these people from the Cape north and then from the Cape south rather than the way it was suggested?

CHAIRMAN LAPOINTE: That may be. That just depends. I mean, we're open to that. We didn't want to get too many groups together but I'm open to the board's suggestions. First of all, do people think it's a logical course of action to keep those discussions going? I see some heads nodding yes. That's good, so we will do that.

Does Gerry's idea about the Cape north and the Cape south make sense? That would mean Massachusetts would participate in two. It would depend on -- Paul is shaking his head no, and I would do the same thing. It was just a suggestion on our part, so, I mean, you can pitch in wherever you want to. Yes for two?

MR. DIODATI: I'd like an opportunity to

think about that a little bit more.

CHAIRMAN LAPOINTE: All right, that's fine. Any other discussion? Ernie.

MR. BECKWITH: Yes, just a comment on a split. I don't think this is a big deal, but if I had my druthers I'd like the opportunity to take part in discussions with New York and Rhode Island about transferability. These are the people that are on both sides of us so whatever split there is, I'd like us to be in with that group.

CHAIRMAN LAPOINTE: The question arises should there be a split. We are doing this to save on people's travel, you know, so that we wouldn't have to go to New Jersey and New Jersey wouldn't have to come to Maine. Does it make sense to have a split? That was the reason for it.

We will not have been to Warwick in three or four weeks so if we want to go back, we could do that. That was the reason, as I remember, for splitting that apart. Should we just have the Lobster Board members who are interested get together because the issues will be similar between those two areas? Paul.

MR. DIODATI: I'm not opposed to a split. What I don't want or what I want to avoid is splitting my state in two.

CHAIRMAN LAPOINTE: Understandable, given your dilemma right now. One area or two? Ernie.

MR. BECKWITH: This issue is probably more important to some states than others. We're talking about a whole range of states. How many states south of Jersey or including Jersey are really interested in coming to a transferability workshop? Are all states or is it mostly in the northeast? Perhaps that will help us make a decision, if we know that.

CHAIRMAN LAPOINTE: Mr. Carvalho.

MR. CARVALHO: Mr. Chairman, Rhode Island doesn't deal with anything north of the Cape, neither does Connecticut or New York. Massachusetts deals with south of the Cape and Massachusetts deals with north of the Cape.

Now I hate to split the sister up but it's her -- I would

suggest that it's her responsibility; and for us to go all the way up there, it doesn't make any sense.

CHAIRMAN LAPOINTE: Well, I suggested Warwick. That's not too far, is it?

MR. CARVALHO: That's not so bad. That's a good idea.

CHAIRMAN LAPOINTE: I know a guy who's going to have to drive a long way to that. One group? I'm seeing head shakes the right way. Good, then we will proceed along those lines. Heather, is that it for that issue?

MS. STIRRATT: Yes.

Other Business

CHAIRMAN LAPOINTE: Other business. The issue of Addendum III gauge sizes and marketing issues discussion, I'm going to once again punt because we're still implementing those, although it's a valid issue.

The next issue is we have a nomination to the Advisory Panel from Connecticut of Mr. Lawrence Fernandes. Ernie, a motion, I think.

MR. BECKWITH: Okay, I move that we approve the nomination of Larry Fernandes to the AP.

MR. ADLER: Second.

CHAIRMAN LAPOINTE: Seconded by Bill Adler. Is there objection to this motion? Seeing none, so approved.

The next topic is Technical Committee membership and the Massachusetts request at the back. At the back of our package is a request from the Commonwealth for the addition of a second member to the Technical Committee.

And, as Paul points out, the charter does allow the board to -- I will actually ask Vince or Bob, the charter allows for deviation on the board's approval, does it not?

I think it's important for board members to note that we, in fact, shrank the Technical Committee down to I believe one member per state, a couple years ago

because it was getting too large and unwieldy. The Chair has that concern remaining but I'll throw it open to the board at this point. Board members. Paul.

MR. DIODATI: Again, the request is based on the workload that is put on us. I believe that we're the only state that's required to provide technical guidance to four LCMT's. That has put a tremendous amount of work on us.

It requires two full-time staff to be involved in lobster biology, and it also requires them to both attend the Technical Committee meetings. We're not asking for two votes on the Technical Committee, again, one state, one vote. I would just like an additional person to be considered an official member of the Technical Committee. Thank you.

CHAIRMAN LAPOINTE: Gordon and then Pat White.

MR. COLVIN: So it starts here, and what's next, and can we afford it? And how does it affect the dynamics of the Technical Committee deliberations? And we put more members on, so we have a wider range of opinions and more minority reports. And I'm against it. I was against it when I was chairman for this reason.

This will lead to the kind of proliferation that got us into the fix we were in when we made the changes we made. I understand the basis of the request and I appreciate that it's made in good faith and represents a need and a problem that we all face, but I don't think this is the way to solve the problem. Regrettably, I can't support it.

CHAIRMAN LAPOINTE: Pat White.

MR. WHITE: Ditto, Mr. Chairman. I just think there's no -- nothing prohibits the committee to have additional advisors or whatever is necessary as time goes on. We only have one representative when we're an extremely large part of the industry, and I oppose it.

CHAIRMAN LAPOINTE: John Nelson.

MR. NELSON: Thank you, Mr. Chairman. I understand the concerns that have been raised, and they're probably very valid, but Paul's point I think is

very valid, also, in that his state does have to deal with a large number of zones.

I just wonder if there's some compromise that is appropriate, and that is that an individual is designated as the Technical Committee member for various zones. I don't know if you can do something like that, but he could then split the workload accordingly.

CHAIRMAN LAPOINTE: As I remember, for the issue of staffing LCMT's, that outside our normal Technical Committee process, anyway. That's a process extra to the commission, so that isn't affected by this.

I think the issue of the money available for the Lobster Board next year is an issue. And as a commissioner from Maine, I share Gordon's concern about the dynamics on the committee. Bruce.

MR. FREEMAN: A question to Paul. Paul, as I understand the request, it is essentially to divide the workload. Is it possible to designate two people and one or the other could be at the various meetings?

Would that be a solution to your problem? I'm sympathetic to this workload because we're facing this in other plans and it is of serious concern. I'm just trying to find a solution to your problem.

MR. DIODATI: There is a separation of duties within the program so that they're both working on different aspects of the program, and so that's why it really requires both of them to attend Technical Committee meetings.

I think that it actually benefits the work at the committee to have both of them there. It would just seem to me that it would make sense, given the four areas in Massachusetts, that we be allowed a second official member to the committee.

It's allowable by the charter with the approval of the board, so I guess I would like to make a motion to approve this request.

CHAIRMAN LAPOINTE: Motion by Paul Diodati, seconded by Dennis Abbott to approve Massachusetts' request for a second Technical Committee member. Is there further discussion on this motion? Gordon Colvin.

MR. COLVIN: I'm tempted to offer an amendment to enable any state to nominate a second member. We all have workload problems. I, frankly, don't think that the number of management areas we're involved in has ever been necessarily proportionately related to the amount of work a Technical Committee member takes on or does from a given state.

I have examples where states with pretty small contributions to the fishery have thankfully provided extraordinary service to Technical Committees. I just don't think that linkage exists. We have a proxy policy that enables us to share workloads.

This Technical Committee has numerous associated subcommittees that are not peopled by the Technical Committee members themselves, necessarily. There are many opportunities for states to share the workload of providing technical input to this management program. As the chairman pointed out, the technical support to the LCMT's and area management is not through the Technical Committee, although the members may often be the same, and therefore that's a disconnect as well.

We're paying travel costs that are potentially affected here. I warn you now that the dynamics of the Technical Committee of this management program are always on a knife-edge, and this is not the way to go with respect to this situation. Sorry, again, I have to strongly oppose the motion.

CHAIRMAN LAPOINTE: Pat White and then Ernie.

MR. WHITE: If Mr. Colvin made that amendment, I would send it.

CHAIRMAN LAPOINTE: Ernie Beckwith.

MR. BECKWITH: Well, I'm not sure where we are now but the point I was going to make is that a state can always assign more than one person to work on lobsters and take care of the workload at home. We do that in the state of Connecticut.

I've got two people working on lobsters, only have one person on the Technical Committee, and we just have to make do the best we can. The person that gets to go comes back and briefs the person that didn't get to go; or, if it's really important to us, we will find the state

money to have that person travel to the meeting.

CHAIRMAN LAPOINTE: In the interest of time and wanting to give our federal partners five minutes on the Final Environmental Impact Statement, I'm going to call the question.

All right, all those members in favor of the motion, please raise their hands, three; opposed, same sign, four opposed. The motion fails. Harry.

MR. MEARS: Thank you, Mr. Chairman. Actually, very briefly, we've had two actions since the last board meeting. One was on September 5th. We had a public comment period through October 7th.

That was an advance notice of proposed rulemaking combined with a notice of intent to prepare yet another environmental impact statement responding to -- see if I can keep this straight-- Addenda II and III of Amendment 3 to the interstate plan. That's one action that's currently in process.

The more notable one, the one we've been waiting much longer for to get to this point was the announcement of the availability of the final environmental impact statement responding essentially to Addendum I of the interstate plan.

It has a public comment period that is open through December 9th. I won't go into a lot of detail in terms of what it's individual components are other than it certainly focuses on a lot of what we've discussed earlier; the adoption of a historical participation regime in Areas 3, 4, and 5.

To give a brief synopsis of what our current priorities are in relation to this environmental impact statement; Number 1. We're refining coming to closure on the timing for submission of documentation to demonstrate historical participation in the Areas 3, 4 and 5 lobster fishery; the establishment of a timeframe for an associated appeals process.

We are also looking, concurrently with this, for a pre-qualification process to facilitate the decision-making process by federal permit holders; and, last but certainly not least, to evaluate the status of individual states with which we have memoranda of understanding with regard to what has already transpired with regard to the acquisition by state and federal permit holders of tags

for the 2003 fishing year and the logistics associated with the permitting, associated with the tagging acquisition process through Stouffle Seals that will accompany implementation of this action. Thank you.

CHAIRMAN LAPOINTE: Bill. I think the thing to do, because we're running out of time, and there's one more agenda item, it strikes me that states need to comment individually and we need to comment as a commission.

Is the 9th of December enough time to do that? I see heads shaking no, so that would suggest to me that we ask staff to write a letter asking for an extension. And it goes right through the holidays so it's going to be awful, but a month's extension seems reasonable.

And then we have the states in a short amount of time, about three weeks submit those comments to staff for consolidation for submission to the federal government. Does that make sense? I cut Bill off and then I'll get -- no, actually I'll get Harry because I'm asking for an extension. Harry.

MR. MEARS: I understand the rationale for this proposed request for an extension; however, I'd also like to stress we are facing some extremely tight timeframes to implement this in a timely fashion.

I would certainly request, if at all possible, if the commission could in fact respond during the current public comment period. If not, certainly that's the way it is, but please recognize that each week means additional complications and logistics with our implementing this process.

CHAIRMAN LAPOINTE: Staff indicates to me that if we can get comments in within two weeks, that Carrie can compile them. Two weeks is the fourth of December. Is that a Friday? That's a Wednesday. All right, comments to staff by the fourth of December. Bill, I'm going to get to you in a minute, so comments to staff by the fourth.

We will compile those. If she's that efficient, we'll try to get a copy out for states to review and then get it in on time. Bill, sorry for cutting you off.

MR. ADLER: Harry, is this different from the one we commented on last month? We commented on Addendums II and III, is this different?

MR. MEARS: Yes, it is, this is Addendum I.

This is leading to the final rule for Addendum I.

MR. ADLER: Okay, so this isn't what we commented on last month. Thank you.

CHAIRMAN LAPOINTE: John Nelson.

MR. NELSON: Isn't this what we've already commented on, Mr. Chairman, Addendum I?

CHAIRMAN LAPOINTE: I think we've been commenting on Addendum I for quite some time and this is just --

MR. NELSON: I just question --

CHAIRMAN LAPOINTE: This is the second round of comments. The key will be to look at differences between the draft and the final to see if it still meets with our comments.

MR. NELSON: Well, I think that -- well, that's true, we should look to see if there is any differences. I didn't particularly see any when I looked at it quickly, and maybe there are some differences, but we have taken a position on it previously; and I would hope that unless there's something really substantial, that those comments are also forwarded.

CHAIRMAN LAPOINTE: Or the new comments should just be, you know, they should be consistent with those, I agree.

MR. NELSON: Or focused on whatever changes might have taken place.

CHAIRMAN LAPOINTE: That's correct.

MR. NELSON: So if that's the case, Mr. Chairman, some of us don't need to respond.

CHAIRMAN LAPOINTE: And that makes Carrie's job all the easier.

MR. NELSON: Yes.

CHAIRMAN LAPOINTE: Other comments on the EIS? The last agenda topic was Bruce asked about the progress on the technical -- oh, I'm sorry, Gordon. Oh, two agenda items. I'm going to just jump to Bruce's; the technical addendum is done and Heather

has it to pass out. Gordon, your issue on Lobster Disease Steering Committee,

MR. COLVIN: Thank you, Mr. Chairman. The board please recall that this board did establish a subcommittee, a Lobster Disease and Pathology Steering Committee, which advises at the present time the partners involved in investigations of the lobster mortalities observed in Long Island Sound in 1999 and subsequently, but also as a constituted subcommittee of this board, reports to this board and hopefully keeps our management program apprised of the findings of that work.

I wanted to give you a very quick report today and suggest the need for a more detailed report at some point in the future. As you know, a major component of that ongoing work has been the awarding of a number of contracts for research by various researchers and research institutions into possible causes and influences of the observed mortalities back in 1999.

This January, in mid-January a two-day technical workshop will be convened at which the principal investigators will be brought together to review the progress of their work to date. It's essentially an interim technical workshop.

Most of the researchers are more or less in the middle of their experiments and analyses. At the conclusion of that two-day workshop, there will be some status reports and also I think some informed -- I won't say, "speculation", but hypothesis generation by the researchers as they compare notes and make suggestions about what they think they're learning and what additional areas of interest ought to be explored.

I think the results of that workshop will be of great interest to the board, and let me suggest that it ought to be of great interest to the folks who are concerned about Area 2 in light of Ernie's earlier comments.

There will be probably -- I don't think we've fixed on this yet, but in early March we're looking at a one-day public session at which the results of the technical workshop will be presented to stakeholders, and I would certainly make sure that all members of the board receive an invitation to that workshop and hope that some of you at least will be able to journey down to our region and attend it.

I think the results of that workshop and that material ought to be mailed to the board and be the subject of a more detailed presentation at an upcoming board meeting. If you have any questions on any of this, I urge you to talk to myself or Lisa or Ernie and Harry, all of whom are on the Steering Committee.

CHAIRMAN LAPOINTE: Just a question, is there room at the January workshop to send our fish pathologists, the people who deal with lobsters, so they can participate directly in that workshop?

MR. COLVIN: I would imagine so, George, and just be in touch with us and we'll make sure that they're given that information. The work that Ernie spoke of that we have observed some new mortalities this summer and fall in Long Island Sound.

They appear to be, as Ernie indicated, unique, new, not previously reported and related ultimately to high water temperatures and their effect on lobsters' calcium metabolism.

That work is not part of the research that was funded a couple of years ago, but it is being conducted by some new capability we've generated in New York by Stony Brook and Cornell; and even though that work hasn't been funded by the program, it will be reported on at the January workshop.

The PI on that, Dr. Al Dove from Cornell, will be at the workshop and is collaborating with other members of the researchers in the previously funded work. I think we'll be looking to fund some follow ups on the rather startling things that Al has encountered.

CHAIRMAN LAPOINTE: Thank you. Questions for Gordon, short questions for Gordon?

MR. COLVIN: The other thing I'll say is there are a couple of web sites where a lot of this information is available. If people are interested, let us know.

CHAIRMAN LAPOINTE: Great. Thanks, Gordon, for that update. Is there other business before the board? Seeing none, we are adjourned.

(Whereupon, the meeting was adjourned at 11:05 a.m., November 20, 2002.)
