

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

**May 20, 2002**  
**Swissotel Washington, The Watergate**  
**Washington, D.C.**

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**ATTENDANCE**  
 Lobster Management Board  
 Washington, DC  
 May 20, 2002

<b>BOARD MEMBER</b>	<b>AFFILIATION</b>	<b>PRESENT/PROXY</b>
George Lapointe	Maine	P
Pat White		P
David Etnier		P
John Nelson	New Hampshire	P
Ritchie White		P
Mary Anne Blanchard		Dennis Abbott (P)
Rep. Anthony Verga	Massachusetts	A
William Adler		P
Paul Diodati		P
Rep. Eileen Naughton	Rhode Island	Jerry Carvahlo (P)
Mark Gibson		P
Gil Pope		P
Sen. George Gunther	Connecticut	P
Ernest Beckwith, Jr.		P
Lance Stewart		P
Sen. Owen H. Johnson	New York	Brian Culhane (A)
Pat Augustine		P
Gordon Colvin		P
Assemb. John Gibson	New Jersey	A
John Connell		P
Bruce Freeman		P
Charlie Lesser	Delaware	P
Timothy Target		A
Rep. John Schroeder		A
Eric Schwaab	Maryland	Bill Outten (P)
William Goldsborough		A
Sen. Richard Colburn		A
Jack Travelstead	Virginia	A
Catherine Davenport		A
Sen. John Chichester		A
Preston Pate	North Carolina	A
Damon Tatem		A
Rep. David Redwine		Melvin Shepard (A)
Harry Mears	NMFS	P
David Spencer	AP Rep.	P
Carl Wilson	TC Rep.	P
Joe Fessenden	LEC Rep.	P

Others in Attendance:

Heather Stirratt, ASMFC  
 Tina Berger, ASMFC  
 Bonnie Spinazzola, AOLA  
 Peter Burns, NMFS

Bob Ross, NMFS  
 Bob Baines, Lobsterman  
 John Sorlein, Lobsterman  
 Greg Hansen, Lobsterman

**ATLANTIC STATES MARINE FISHERIES  
COMMISSION**

**VERBATIM MINUTES**

**AMERICAN LOBSTER MANAGEMENT  
BOARD**

**Swissotel Washington,  
The Watergate  
Washington, D.C.**

**May 20, 2002**

**MONDAY MORNING SESSION**

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The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Monticello Room of the Swissotel Washington, The Watergate, Washington, D.C., Monday, May 20, 2002, and was called to order at 11:00 o'clock a.m. by Chairman George LaPointe.

CHAIRMAN GEORGE LAPOINTE: Good morning. You are at the American Lobster Management Board meeting of the Atlantic States Marine Fisheries Commission. I am George LaPointe. I'm the chair of the Lobster Board. With me this morning, for lobster, Heather Stirratt is the staff member who deals with lobster. Carl Wilson is the chair of the Lobster Technical Committee. David Spencer is the chair of the Lobster Advisory Panel. We have distributed materials from the Lobster Board meeting, including a revised agenda. I believe there are extra copies of the agenda and materials at the corner of the room for people. Should we call roll? What have we done in the past? Have we --

MS. HEATHER STIRRATT: We've passed around a sign-up sheet.

**BOARD CONSENT**

CHAIRMAN LAPOINTE: All right, we will pass around a sign-up sheet because in glancing around the room, we do have a quorum, but we'll pass around a sign-up sheet to save time. I will, as I did last time, try to stick with the times on this agenda as quickly as we can so we can finish on time. At times I will drive the discussion or try to focus it to continue to do that. We

have an agenda. Are there additions to the agenda before we go on? Seeing no additions to the agenda, we have what is called in the agenda the proceedings from the last meeting. Are there additions or changes? Bill Adler.

MR. WILLIAM A. ADLER: Thank you, Mr. Chairman. It's a minor one. It's on page 27, the middle of the first column. I think the word is cetyl hair, not seal hair.

CHAIRMAN LAPOINTE: Let's hope so; otherwise it's a marine mammal violation.

MR. ADLER: Right. Other than that, I'll move it be accepted as corrected.

CHAIRMAN LAPOINTE: Are there -- There's a motion and a second. Second by Pat White, motion by Bill Adler. Are there objections to accepting the proceedings as revised? Seeing none, they are approved. The next item on the agenda is public comments. For members of the public who are here, we have this period on the agenda for people to make general comments to the board. We will also welcome public comment on each specific agenda item as they go along. Are there any members of the public who want to make statements at this point? Seeing none at this point, we'll move to the advisory panel report with David Spencer. I will take a moment here. This is David's last meeting. He's been AP chair for two years. David, I want to express the appreciation of the commission and the board for your work. For me, both as a board member and as the board chair, you've consistently run good advisory panel meetings and solicited the advisory panel comments on issues, both easy and contentious, and we appreciate that input and we're going to miss you. (Applause)

**ADVISORY PANEL REPORT**

MR. DAVID SPENCER: Thank you, Mr. Chairman. The advisors met on April 10th in Warwick, Rhode Island. We tackled four issues: Draft Amendment IV, compliance concerns regarding Massachusetts, most restrictive rule language, and the LCMT composition role. The first issue that we discussed was Draft Amendment IV, which is the conservational equivalency for both non-trap gear limits and the prohibition on possession of V-notch females. I will not go through the item-by-item comments that were made. I will give a brief overview. The advisory panel decided to recommend that Draft Amendment IV be indefinitely tabled. This recommendation was based

upon a majority opinion with one dissenting opinion noted for the record. The highlights, for that reason, are that we feel that these two items were and are the corner stones of Amendment III, and we're concerned about setting a precedent. We noted that it took ten years to come to agreement on some of these elements and also noted that the approval of Draft Amendment IV may set a precedent and result in opening the floodgates to many interested parties who intend to propose alternative regulations for these two elements. I'll leave it at that for our recommendations on Amendment IV. The next issue that we discussed was the compliance concerns with Massachusetts. Our comments are based on the situation as we understood it at the time of our discussions; and should the situation with Massachusetts implementation change, obviously so would our comments. I think, before I give you our comments, I'd like to note that in the audience today are some fishermen who took the time -- today is obviously a fishable day. This is not an area that's in anybody's backyard. You don't roll out of bed in the morning and decide you're going to go to Washington, D.C. There's a lot of very strong concern regarding this issue. We also have six letters from LCMTs. That's six out of the seven LCMTs sent letters in regarding this issue urging implementation. I want to point out that, to me, this is a very unique situation in fisheries management. When industry is asking for management measures to be implemented, I don't think that's typical of too many fishery management meetings, and I think it's a spirit that we don't want to lose. Having said that, we strongly encourage implementation of Addendum II and III by the Commonwealth and certainly urge the continuance of co-management with the concerned LCMTs. We also have some concerns about area management, which we feel is the cornerstone to lobster management and how these actions might affect the concept of area management. Two of the justifications for our feeling this way is the possible domino effect or the retraction effect by not implementing this may have in other states. A good example is, as you know, Rhode Island has already gone up on the gauge to 1/32. Should these measures not be implemented, we have a fear that they actually might retract, it and that certainly is running counter to lobster management. We also have concerns that any delay in implementing these management measures could dramatically increase the burden of regulations on industry in the out years, keeping in mind that 2008 is the year that we have to meet F-10 by. Our next issue was regarding the most restrictive rule. We had general agreement on this issue with one exception, and I believe there's a handout regarding this situation. And this only applies to trap numbers for people that fish multiple areas. We are not

asking to do away with the most restrictive rule language. We feel that it has gone beyond the initial intent in how it's currently being interpreted with regarding traps and multiple areas. I think the best thing to do is to give you an example of our concern. If you consider a Rhode Island fisherman who is permitted to fish in Areas 2 and 3, currently he can fish 800 traps in Area 2 and historically he has fished 300 in Area 3. When the federal government goes to historical participation in Area 3, that fisherman will be limited to the most restrictive allocation, which will be 300 traps in both areas. We have concerns. That was never the intent of historical areas. We certainly would feel that if somebody has participated in a small level in a historic area, that participation should continue. We crafted some language that we feel alleviates that. If you'll permit me, I will run through it quickly. In the handouts I believe there are four examples as to how this would work. The language is as follows -- and it's Option Number 3, I believe, on your handout: "When designating multiple management areas, the most restrictive management measures shall apply with regard to all areas fished. Total trap allocations shall be determined by using the highest number of traps allowed within each management area and applying the most restrictive rule. "Most restrictive shall not apply to the actual allocation granted to individuals within each management area. At no time shall an individual's total number of traps fished exceed the total number of tags issued or the number of tags qualified to fish within each designated area". I can run through the examples or if -- I think they're pretty self-explanatory, but I want to emphasize this is not an attempt for people to be able to circumvent any regulations. It's simply a means of flexibility to let people continue what they were doing as closely as we can. I'll let it go with that. I know it can be -- we really would like the board to give this some thought and discussion. It could very severely impact some people who fish multiple management areas. The next issue that we talked about was the LCMT composition and roles. We came up with some recommendations concerning the composition. They are we would recommend that there be a minimum number and a maximum number required for each LCMT. Currently there is only a minimum number. We recommend that the LCMT should determine what that maximum number is. We also had a recommendation that in order for somebody to be placed on a LCMT, that they should have to fish in that area. They should have to have that area designated on their permit. As far as the role of the LCMT's is concerned, we feel that we have been strictly adhering to Amendment III as it's written and feel that is the appropriate way to continue. That would conclude -- I

would like to thank you for the opportunity the advisory panel has to advise the board, and that would conclude my report.

CHAIRMAN LAPOINTE: Are there questions for David on the AP report? Bruce Freeman.

MR. BRUCE FREEMAN: David, does the Fisheries Service sit on three, LCMT 3? I'm sorry, the advisory panel, does the Fisheries Service sit on that?

MR. SPENCER: I don't believe they officially do. We would certainly welcome their presence at every AP meeting. They have been there before, but I think it can only helpful if they're at every meeting.

MR. FREEMAN: Well, my comment would be their reaction to these proposals, because I know in the past various lobster management areas had recommended certain measures and some of those have been agreed to by the Service and some not, for various reasons, and I'm just curious as to their reaction to this. Has there been any?

CHAIRMAN LAPOINTE: Bruce, were you talking about the most restrictive language, in part?

MR. FREEMAN: Well, as I understand what David indicates, the desire of the advisors is Option 3; and if in fact that's the case, then I would be curious as to the reaction of the Service to this. Again, I feel it would be somewhat fool hardy to put in place something we know the Service won't react. All we're going to do is create confusion, and they may think this is a wonderful idea and can be put in place or they may not. I'm just curious as to what their reaction is.

CHAIRMAN LAPOINTE: On that particular issue, at the end of the PRT report, they did a white paper on the most restrictive. Can we hold off discussion of that so we can wrap those things together?

MR. FREEMAN: That would be fine.

CHAIRMAN LAPOINTE: Thank you. Other comments or questions to David about the AP report? If there aren't any, and I don't see any more right now, I will point out for folks that Bob Baines from Maine is the incoming chair of the advisory panel. Bob took the time to come down today to see what he was getting himself into. Thank you, Bob. David.

MR. SPENCER: Thank you, Mr. Chairman,

and I'm very pleased and very confident that Bob will offer and provide very good leadership to the AP in the next two years. I'd just like to take the opportunity to thank the board members for allowing me to participate and represent industry in this process. I appreciate the interest and respect that this board has shown for advisory panel input. I believe very strongly in this process which -- and it has been a privilege to be a part of it. I believe this process is working, although there are some peaks and valleys along the way, but the bottom line is that we are moving forward. I would additionally like to thank Gordon and George, under whose chairmanships I served, for their recognition of the AP process. I would like to especially thank Heather for her hard work and commitment to the AP process and to lobster management in general. She is what makes the AP process work and I cannot thank her enough. Thank you.

CHAIRMAN LAPOINTE: Thank you, David. We will now move onto the next Agenda Item 5, review and discussion of the status of Amendment 4, and Heather will lead us in that discussion.

#### **DRAFT AMENDMENT 4**

MS. STIRRATT: I'm just going to provide the board --

CHAIRMAN LAPOINTE: Oh, hang on. Do you have a specific comment, Paul?

MR. PAUL DIODATI: We had a pre-meeting telephone conference and at that time I had asked that the board consider postponing any discussion on Amendment 4, discussion, review or actions. I can see it's still on the agenda. I thought that we had some agreement that it would be postponed. So, if a motion is necessary, I'll make the motion that we postpone discussion on Amendment 4 until our next meeting, which I believe is in July. So I'll make that motion now.

CHAIRMAN LAPOINTE: A motion to postpone until July. The reason it's on the agenda, just so you know, I was not on the conference call. I would have rather have been on the conference call than doing what I was doing last Tuesday. I had made a commitment at the end of the meeting last time -- Amendment 4 got pushed off the agenda because I made the commitment that we would be done on time. I committed to Jeff Pike specifically that it would be on the agenda, and I think that the way to get it off is your motion. Is there a second to the motion? Seconded by

Pat White. Motion to table, I think is the right word, until our next meeting.

MR. DIODATI: Postpone discussion.

CHAIRMAN LAPOINTE: Help me out, parliamentarians. All right, postpone to time certain or tabled to a time certain, I guess -- is there a difference -- until the next meeting of the Lobster Board. We have a motion and a second. Motion to table is non-debatable. Do states need time to caucus? All board members in favor of the motion, please raise your right hand; states opposed, same sign, none opposing; abstentions; are there any null votes? The motion to postpone until the next meeting carries. We're ahead of schedule. The next agenda item is the plan review team report and Heather will start us on that. There is a handout for the PRT report, is there not, in members' packages and on the back table, which I think will be useful for people to have as we go through this.

#### **PRT REPORT**

MS. STIRRATT: Okay, just a little bit of background, and then I'll get into the powerpoint presentation. The plan review team convened via conference call on March 21st, April 17th, and April 29th to discuss the status of state compliance. Compliance elements for American lobster include implementation of management programs outlined in Section 3 of Amendment 3 and implementation of all addenda prepared under adaptive management according to the schedules outlined and approved by this management body. So to begin with, I'm going to be referring to the plan review team's report. It was included in your packet. You're also receiving handouts of a number of letters that were received by staff, some of which are directly linked to the Massachusetts concern. In addition to that, you should also be receiving a white paper that the plan review team has recently drafted. I would like to just note that all this material was distributed in advance with the exception of the letters you're receiving now. I'm going to walk you through the state-by-state implementation or rather the state-by-state evaluation. The plan review team evaluated all of the states who have a declared interest in American lobster, beginning with the state of Maine. We did include trends for you all to note. I'm not going to speak to those directly so that we can save some time here today. I will focus on the deficiencies, the areas of concern, and compliance issues, as well as recommendations for action if they are appropriate. For the state of Maine, no deficiencies were noted, nor were any areas of concern raised; therefore, there is no

recommendation necessary on the Maine compliance at this time. For the state of New Hampshire, there were no deficiencies noted, no areas of concern, and therefore there's no recommendation for action at this time. For the state of Massachusetts, the plan review team noted that there was a failure to implement Addendum II, which required a 1/32 of an inch gauge size increase in Area 2 and the Outer Cape no later than December 31st of last year. The PRT also noted, based upon correspondence not received directly from the state of Massachusetts, but press releases from the state of Massachusetts as well as a letter that has been in wide circulation from Paul Diodati to his marine fisheries commission, noting a lack of intent to implement Addendum III. Now I simply note this as an area of concern. Addendum III is not a compliance issue at this time because the implementation date under that addendum is July 1st of this year. The compliance issue that will need to be addressed by this body as it stands is the compliance issue relative to the gauge size increases under Addendum II, which as I just mentioned, should have been in place no later than December 31st of last year. As such, the plan review team is recommending that action be taken on Massachusetts non-compliance with Addendum II requirements. In terms of actions that may need to occur by the board, I would simply ask that before any action is taken on this, we give the state of Massachusetts ample opportunity to speak to this concern, and note that either a finding of non-compliance could be forwarded on to the ISFMP policy board or some time certain should be established and some process outlined so that we can move as quickly as possible and in the most time efficient manner as possible to resolve this problem. Are there any questions relative to Massachusetts compliance item before I move on? We evaluated the state of Rhode Island. There were no deficiencies noted in their report, although I will note that there was some concern by the plan review team in terms of the implications of Massachusetts non-action on Rhode Island's scheduled gauge size increase and the gauge size increase that has already been taken and was taken last year. As such, since there are no compliance issues, we have no recommendations for action on Rhode Island's compliance at this time. For the state of Connecticut, the plan review team noted that the report did not cover the current calendar year and this is more of just a reminder than anything else to the state of Connecticut that it must cover the previous calendar year and the current calendar year, understanding that this report is due in March and clearly we're not going to get a full report on the current calendar year. Just some information about intended plan of actions or any

change that may occur during that year would be sufficient. We also noted as a plan review team that there were some areas of concern. Specifically I'm going to reference the report and read directly from these concerns. The PRT expressed concern about the state allowing one person to fish pots with the tags of another licensee, which allows one individual the ability to haul more than his or her trap limit allocation. What I did was include an excerpt from the state of Connecticut's regulations relative to this lobster pot limits and this requirement. You'll find it in the report itself. The plan review team noted that 30 trips is a substantial number of trips without approval by the commissioner. The plan review team questioned whether the commissioner should approve this allowance from day one. The plan review team questioned how the state is keeping track of how many individuals are allowed to do this, and the PRT questioned who is enforcing and/or monitoring this situation. The plan review team kindly asks whether the state has anything to offer on this concern, and I would note for the record that staff has contacted Ernie Beckwith. We're just simply providing this information because it is a concern and we wanted to provide some documentation for the record that this was raised. Are there any questions on the state of Connecticut, and certainly we can come back to the state to provide comments on that. Moving on, the state of New York. There were no deficiencies in the report; however, there remains a concern that the circular escape vent size required under Addendum I has not been implemented. This is a compliance issue and remains such. This circular escape vent should have been implemented no later than September 1 of 1999; and as such, the plan review team is recommending that the board issue a time certain by which the state of New York must implement the specification of the circular escape vent size required under Addendum I. For the record, it's my understanding in previous conversations with the state of New York that this requirement has not been implemented mainly because it has been held up within the state legislature's rule-making processes. Certainly, we can let the state of New York speak to this issue further at the completion of this report, but if there are any questions in this regard, I would be happy to have those now. Moving on to the next slide, the plan review team reviewed the state of New Jersey's report and there were no deficiencies; however, there was one area of concern. The report noted that there was an intention by the state to remove a vessel upgrade provision which is required under Addendum III for Area 5. This is not a compliance issue at this time. Again, Addendum III is not required for full implementation until July 1st of this year. However, if

the state does remove that provision, then it would be a compliance issue. We are simply noting it in advance; and as with the other states that we have listed concerns, we will allow New Jersey the opportunity to speak to that directly. Are there any questions about this particular concern raised by the plan review team? The remaining states have all requested *de minimis* status. There were no deficiencies from Delaware through North Carolina, nor any areas of concern that were noted. You will find sufficient information on which to base the decision to grant *de minimis* status for 2002 in the plan review team's report. We do provide the average landings that the state reported, so you should have that information available to you. With regard to the states' request for *de minimis*, the plan review team recommends that *de minimis* status be granted to these states running Delaware, Maryland, Virginia, and North Carolina. Finally, in the plan review team report, you will find a series of recommendations at the very beginning. These include that the states provide enforcement information in their annual reports. It's my understanding, in speaking with Mike Howard and a number of law enforcement representatives, that this issue is going to be taken up for discussion during the Law Enforcement Committee's discussions this week. It will be taken up for a broader context of discussion, not just focusing on lobster, but certainly the need to get some information on enforcement into our annual reports. One of the things that the plan review team did was take a look at some of the information that could be provided by one particular state and Maine was gracious enough to provide that. Joe Fessenden, I believe, collected a series of information and provided that in a template to me as staff and that was forwarded on to the plan review team.

It was very short. It was a one pager, something that apparently did not take a significant amount of time to compile. That is available for those states that may be interested to use that as a template to follow. And, finally, the plan review team recommends that states implement the regulations to cover all adjacent management areas as required by the FMP. Really, this final recommendation is a good segue into the plan review team's white paper on management measures, which was distributed this morning. It's an issue paper on the most restrictive rule. If you will just bear with me for a second, this paper was developed as a result of the February board meeting discussion where staff was quite concerned that we may have problems implementing and enforcing the requirements of the most restrictive rule if in fact the states are only required by the FMP to implement the management areas for those waters adjacent to their state. The PRT



has drafted this issue paper which attempts to outline these difficulties, and it's worth noting that members of the Law Enforcement Committee have taken a look at this draft white paper. The bottom line here is that states really have no means to enforce all seven management area requirements under the most restrictive rule, given that they have not implemented all of these area requirements. The plan review team has outlined this issue in terms of the implications at the state and federal levels. We tried to take a look at area elections, the number of area elections on a state-by- state basis. As you'll see, many of the states have five or six areas represented, at least at the federal permitting level, within their state. In addition, we tried to outline the magnitude of this issue. We tried to do that by taking a look at the number of permit holders by area within each state, and that should tell you whether this is really going to be a significant concern or not. Finally, the plan review team tried to outline some mitigation strategies which the board could consider. It's not the intent of the PRT to completely resolve this issue of the most restrictive rule today. This may be an issue that needs to be further discussed at a forthcoming board meeting, but as promised during the February board meeting, staff and the PRT wanted to provide you with this information as food for thought. If you want to enter into a discussion today, certainly that would be possible, too. I just want to note that we don't have to complete this today. Mr. Chairman, that completes the PRT's report on compliance and the issue paper as presented.

CHAIRMAN LAPOINTE: Thank you, Heather. I'm going to kind of roll backwards. The PRT is recommending state regulations cover adjacent areas. Are there any states that have done that?

MS. STIRRATT: To my knowledge, George, no state has implemented all seven management areas. However, if I can use one example, the state of New York, which is adjacent to I believe three areas, has implemented much more than that. I would defer to Gordon's report on that, but they've implemented Area 2, I believe Area 4, probably even Area 5, I'm not sure. Gordon can probably speak to that issue directly.

CHAIRMAN LAPOINTE: My question is this. Gordon, can you provide that to the other states or staff to the other states? It strikes me that would be a useful thing, to see what you've done in New York in terms of crossed areas as we consider those in our respective jurisdictions as well.

MR. GORDON COLVIN: I can, but let me

bring you right up to date. We have drafted a rule that would do that, and that rule will shortly appear as a notice of proposed rulemaking in the state register. It does attempt a mechanism to address I think Areas 2, 3, 4, and 5, and then there's also a cross mechanism that tries to crosswalk that with the fact that nothing has to happen in 6 right now. That's also tangent to it, and I'll be happy to share that proposed rule with the staff as soon as it appears in the state register.

CHAIRMAN LAPOINTE: Thank you, Gordon. Are there questions to Heather about that item in particular? I'm going to kind of step these back through the order and try to pick the low-hanging fruit before we get to the other issues. Questions about cross area regulations? Mark.

MR. MARK GIBSON: Does that, Gordon, mean that you have a proposed rule for a gauge increase to complement Area 2?

MR. COLVIN: Yes.

CHAIRMAN LAPOINTE: Other questions about cross area regulations? The next recommendation I have from the -- I'm ignoring New Hampshire again.

MR. JOHN NELSON: Mr. Chairman, let me ask you, from the standpoint of if folks have a federal permit and they're designating those areas -- and let me use Maine for example. They have a few federal -- you did get some federal permittees eventually, right?

CHAIRMAN LAPOINTE: We have a couple.

MR. NELSON: Or did you just take over the state water -- no, never mind. But, anyway, so you have federal permittees that are designating 1, 3, 2, but they're going to be landing in Maine. I would think that then the state of Maine would have to implement regulations that reflect what was appropriate for Area 2, and I use Maine, but we did look at our federal permittees and we noted that we had several that were fishing or had marked that they were fishing Area 2. I doubt if they will, but we then proceeded on that basis to put in rules that reflected what Area 2 called for. Now, they haven't gone into place yet, but they will eventually. I see on Table 4 of the handout that there is also some supposedly for Area 4 and 5 for New Hampshire, which our research did not reveal that, but, needless to say, if we're basing it on the federal permits and they have our state permits, I think the question is

whether or not the states are obligated to put in measures that reflect what those zones are. We proceeded to do that based on what we had for our information.

CHAIRMAN LAPOINTE: Heather.

MS. STIRRATT: According to the FMP, John, you're not required to implement areas outside of your adjacent state waters, but it doesn't make any logical sense. This is a problem primarily because the federal agencies have not yet come up to speed with their rule-making process and implemented those regulations pertaining to Area 3 and all of the other areas that they would be permitting, which are closer to state waters. The issue that you're raising is the whole premise for this white paper moving forward, and I think it does beg the question of should states be required to implement at least the number of areas that are federally permitted pertaining to their state; or, should it just be a voluntary basis where states are going to be monitoring this information and taking the appropriate rule-making action necessary to address this concern?

MR. NELSON: So it's a timely issue, Mr. Chairman, and I think we do need to give some thought to it.

CHAIRMAN LAPOINTE: I agree because I think for effective enforcement in those other areas you need those kind of regulations. Can you also send your regs or draft regs to the Commission staff so other states can look at those? Again, this is a complicated issue and if we can take advantage of -- if other states can take advantage of the work that's been done in New Hampshire and New York, it might help us speed that process along.

MR. NELSON: Sure.

CHAIRMAN LAPOINTE: Bruce Freeman.

MR. FREEMAN: George, did you or Heather make mention of the information in Table 4? What was the basis of that?

MS. STIRRATT: The information included in Table 4 was collected from the National Marine Fisheries Service. It contains the number of permit holders by area for each state. And, again, I would defer to the National Marine Fisheries Service about any specific questions about this data particularly, but that's the basis.

MR. FREEMAN: The reason I asked, I'm looking at some of the numbers here, and we have no indication that New Jersey fishermen fish in Area 1, for example, or Area 2, and I'm just curious if people essentially are just indicating every area they can think of with the expectation, as what occurred in New England in the groundfish, people just checked every box when they were issued the federal permit with the expectation at some time that may be worth something and, of course, they were proven to be correct. But it just strikes me, in looking at New Jersey, that some of the permit holders fish Area 1 and 2. We have no indication that anyone fishes those areas. No one has fished those areas.

CHAIRMAN LAPOINTE: No wonder they need horsepower upgrades. Heather wants to respond to that and then I'll ask Harry as well.

MS. STIRRATT: Bruce, I simply want to note for the record that you'll find under Tables 1 and 2, where we start to look at the number of permits and area election, that there are some highlighted notes at the bottom of those tables, which state just because an area is elected does not necessarily mean that the permitted individual is actively fishing in that area or all areas he or she has selected. Some fishers may choose an area to avoid concerns about limited entry down the road, but it is also plausible that the most restrictive rule is creating a disincentive to maintain numerous area elections indefinitely. So they're really competing interests.

MR. FREEMAN: Well, in our case, I suspect there's some other motive than actually participation. I just don't know what it is. I just want to bring that forth. I'm not sure if that's true of other states, but it just seems that people are trying to play the system.

CHAIRMAN LAPOINTE: Harry.

MR. HARRY MEARS: Thank you, Mr. Chairman. There's a number of factors which should be recognized here. The data in the tables reflect the areas which were declared between May 1 of 2001, to April 30, 2002. It's a snapshot. This changes day by day inasmuch as federal permit holders can essentially renew their permit at any point during the federal fishing year. What Bruce indicated is true. Fishermen, for whatever reason, can declare one area or they can declare all seven areas. Based upon recent discussions with lobstermen, what Heather also said is true as well. There's an increasing acknowledgement that as we

move forward with area management, especially where the more restrictive applies, it is in fact creating a disincentive for lobstermen to request authority to fish in multiple lobster fishing areas where the regulations differ.

CHAIRMAN LAPOINTE: It strikes me that as states consider this kind of regulation and they look at that information on Table 4, that we should have our staff deal with your staff to work out exactly what that means on those lines to help states move forward. Other questions about cross-area regulations? The next item I had on my list is the PRT recommended that states provide information about enforcement of state regulations in the annual report. Is there any objection to that being added to the annual report? It strikes me that this is a pretty easy one to -- or questions about it, actually? Ernie and then Paul Diodati.

MR. ERNEST E. BECKWITH, JR.: Thank you, Mr. Chairman. I think we need more detail because I know that our law enforcement people are just absolutely going to bristle over this because they feel they're already burdened to supply a lot of information. So if someone could outline what they're thinking about, that would be very helpful for us, and then I can comment further.

CHAIRMAN LAPOINTE: Good comment, Ernie. Paul Diodati.

MR. DIODATI: My only concern is that putting it onto the state's annual compliance report would be difficult for me since law enforcement is a separate division in my state. Right now, we're in the same department, but they may be in a different department the next fiscal year. You know, nevertheless, I would recommend that this is an important item to have, important information to have, but it might be better for the LEC to do it and to do it that way; that way you're dealing directly with the law enforcement agencies.

CHAIRMAN LAPOINTE: Joe, does that sound like a logical course of action?

MR. JOE FESSENDEN: I wasn't paying attention, I was reading the minutes. Repeat the question.

CHAIRMAN LAPOINTE: There were a couple of things that came up. One, Ernie suggested he would like to have just a little bit more information; and certainly, I can have you and Heather work on that, but

Paul said, I believe, that when the LEC does plan reviews, that we could use that document. Is that correct, Paul?

MR. DIODATI: Yes, rather than have it tied to the natural resource agency's annual report, I think it should be a separate report only because I don't have control over law enforcement in my state, and I suspect that may be true in some other jurisdictions.

CHAIRMAN LAPOINTE: Joe.

MR. FESSENDEN: I would probably do it similar to the striped bass report that we're currently doing under the plan. We do a herring enforcement report. I think you ought to go that route, require a separate report from law enforcement rather than have a lot of detailed information required from the states.

CHAIRMAN LAPOINTE: I'll work with you and Heather to work on this issue and just bring it back up before the next board meeting with some of these questions, to work them out. Other questions about that recommendation and the course of action we'll take? Seeing none, the next item I have -- it strikes me that we can deal with the request for *de minimis* status fairly quickly. We had requests for *de minimis* status for I believe the year 2002 from the states of Maryland, Delaware, the Commonwealth of Virginia, and North Carolina. I would entertain a motion to grant them *de minimis* status. Motion by John Nelson; second, Pat White. Is there discussion on the motion? Okay, Harry, I'll get to you, go ahead.

MR. MEARS: Mr. Chairman, just for the record, could someone reiterate what the implications or understanding of a *de minimis* acknowledgement would be, what it means to a *de minimis* state.

CHAIRMAN LAPOINTE: I was going to ask staff to do that, but thank you, Harry.

MS. STIRRATT: Harry, according to Section 4.3 of Addendum I, if *de minimis* status is granted, then the *de minimis* state is required to implement at a minimum the coastwide requirements listed under Section 3.1 of Amendment 3. Any additional components of the FMP which the board determines necessary for a *de minimis* state to implement can be defined at the time *de minimis* status is granted. For all other components of the plan, the board will specify the motion which measures a *de minimis* state must adopt. To date, I would simply note that includes the coastwide requirements, and I believe there were one or

two provisions under Addendum I that were approved, black sea bass pot limits, something along those lines.

CHAIRMAN LAPOINTE: Those states are in which area?

MS. STIRRATT: Those states fall under Area 5.

CHAIRMAN LAPOINTE: And is there an increase in the minimum size limit in Area 5?

MS. STIRRATT: Yes.

CHAIRMAN LAPOINTE: Would those states not be bound by that minimum size limit, not the coastwide standard of three and a quarter inches or no?

MS. STIRRATT: They would not be bound by that, but if a state implements those regulations, then they must maintain them. I believe there are a few states that are planning on implementing minimum gauge size increases. For instance, Maryland comes to mind.

CHAIRMAN LAPOINTE: John Nelson.

MR. NELSON: Well, it's been a while since I've looked at the plan, but I always was under the impression, George, that things like minimum sizes were not a *de minimis* issue. Those were things that were implemented and recording and monitoring and that sort of thing were what was excused based on *de minimis*.

CHAIRMAN LAPOINTE: I think you're correct, but when Heather was reading the *de minimis* status, it was talking about coastwide requirements and area requirements aren't coastwide requirements in this case. I think Heather also said that if there are provisions in addition to the coastwide requirements, that the motion should reflect those. Bill Outten, can you give us an update on what's going on in Maryland?

MR. BILL OUTTEN: Right now we are at the 3.1 of Amendment 3.

MS. STIRRATT: According to Addendum III, which would be the next series of gauge size increases, the states aren't required to implement anything before July 1st, so it would make perfect sense that Maryland and those *de minimis* states have not yet implemented anything. However, my example in providing Maryland was referring back to a plan review team discussion where the question came up about

whether Maryland intended to implement those minimum gauge size increases, and there was a reflection at that time by Bill that they were intending upon implementing those gauge size increases.

CHAIRMAN LAPOINTE: John Nelson and then Bruce Freeman.

MR. NELSON: Maybe that's where my thought process should have been, Mr. Chairman, and that was if we have a gauge increase or some increase -- well, a gauge increase and it's something that's supposed to be put in place by states that are adjacent to that area, to me then they would have to do that, and it's not a *de minimis* issue. I think I heard that Area 5, for example, had done a gauge increase and that those states requesting *de minimis* were adjacent to that area, and I would think that therefore they would be putting the gauge increase in place July 1st or whenever it is that we had so requested. Is that the board's understanding or --

MS. STIRRATT: John, what you've said is correct if it's a state that is not a *de minimis* state. But according to Addendum III, there was no additional provision written into that addendum that specified that *de minimis* states would be required also to implement those minimum sizes. What George has said about this being an area-by-area requirement is correct. The coastwide minimum, according to Amendment 3, has not changed from the three and a quarter inches.

CHAIRMAN LAPOINTE: Bruce Freeman.

MR. FREEMAN: That last revelation causes me to pause, but the question I had, when I raised my hand, was the requirement that states would implement in Area 5, for example. As I understand what you said, Heather and George, is that those states, for example, would essentially abide by what the federal rule is so far as pots are concerned fishing a particular area. However, my question would be if they decided to do something different, for example, implement what LCMT 5 has indicated, could they do that or they simply will be bound, because they declared *de minimis*, as to what the federal agency has?

MS. STIRRATT: Bruce, a state always has the right to act more conservatively than what's written, in this regard, than what's required by the *de minimis* states to implement. So, in the case in Maryland, where they're talking about implementing the Addendum III gauge size increases, they're acting more conservatively. Once they put those regulations on the

book, they will never be able to relax those regulations, according to the plan.

MR. FREEMAN: Well, that wasn't my question, but since you mention it, then technically Delaware and Virginia could remain with the three and a quarter and Maryland would have a larger size or could have a larger size. I suspect that won't prevail for very long. But disregarding that, my concern deals with the number of lobster traps that could be fished either in Area 5 or Area 3. Now I think relative to the fact that the board has put in place that five-mile overlap between area 5 and 3, that should take care of the concerns that fishermen in Virginia, Maryland, and Delaware had, but it doesn't -- well, let me just stop there. It takes care of that problem. So, this may be a hypothetical situation which won't occur, but it seems once a state declares *de minimis*, whatever coastwise requirements they have, they would comply with.

If they wanted to change for some reason and become less conservative, let's say LCMT 5 allows them to fish more traps and they want to take advantage of that, they would have to now forego *de minimis* and become a full partner. Is that my understanding?

MS. STIRRATT: The requirement in the plan -- and I'll have to look at what section; I think it's Section 5.1.1, but it says that once a state has implemented regulations into its law books, it cannot relax those regulations to be less restrictive, and that's not specific to a *de minimis* state. That's a cornerstone of the plan.

MR. FREEMAN: But it doesn't answer my question.

MS. STIRRATT: Okay, I'm not sure I'm understanding your question, Bruce, if you could restate it.

MR. FREEMAN: Well, hypothetically, if a state declared *de minimis*, and let's say theoretically that the federal agency had a 500-pot limit, but a state in Area 5 could fish 800 if they implemented LCMT 5's recommendation. My question is how could they get out of the federal and essentially now abide by what the LCMT had recommended, which is in place for other states?

CHAIRMAN LAPOINTE: Harry, in answer to that question, doesn't the federal permit say they have to follow the stricter of state or federal; so, if in fact there was a 500-trap limit in federal waters adjacent to

Area 5 federal permit holders, and the bulk of the fishery is in federal waters down that way, would be bound by the federal regulations, would they not?

MR. MEARS: I'm trying to understand Bruce's question to respond to yours, where I think you're coming from. I think Bruce's statement is such that the majority of lobster permit holders in *de minimis* states have federal lobster permits. So given that, your question that do federal regulations not have a provision to abide by the more restrictive of state or federal regulations, the answer is yes. So they in fact, if they have a federal permit and not only a state permit, which I understand are few and far between south of New Jersey, that is in fact true.

CHAIRMAN LAPOINTE: Pat White.

MR. PATTEN D. WHITE: I guess I'll just pick up on where Harry was because in looking at these numbers, we're only talking about 43 people here, according to the total figures. Only 18 of them are solely registered in Area 5. All the rest have registered in another area, anyway, and are going to have to abide by some further regulation, and I just don't see that it's a big argument. I guess I would like to move the question. If these people all decide to all fish in Area 5, the maximum we would still have is 43 people.

MR. FREEMAN: This is not an argument. I'm trying to get clarification that if in fact someone wanted to make a change, how this would be done. If we can clarify it now, I think it will -- you know, whether it's 1 person, 43, or 4,000, to the individual it may be extremely important. So, I mean, numbers are immaterial here. I mean, if one person wanted to do it, then we should have a rule that applies to one person or the rest of the people along the coast. But I'm just trying to get clarification of how this would occur, to avoid a problem that may occur in the future. I don't think, at the present time, this is a pressing issue, but I'm just curious on how it would be handled. I mean, this plan is extremely complicated. And, George, you know, I don't want to take time. I know there's a lot of things on the agenda. I mean, if thought be given to this by staff and we could come up with an answer at the next meeting, that would be fine.

CHAIRMAN LAPOINTE: Staff indicates they can do that by the next meeting.

MR. FREEMAN: That would be fine, let's just move on.

CHAIRMAN LAPOINTE: Questions or comments on the motion? This would grant *de minimis* status for lobster for Delaware, Maryland, Virginia, and North Carolina. Outside of the motion, but should this pass, staff would work on clarifying Bruce's question about how changes would be made in the future that could impact that *de minimis* status, I believe. Questions? Comments? Any comments from the audience on this particular issue? Bruce Freeman.

MR. FREEMAN: Just to get absolute clarification, by declaring a state *de minimis*, in this instance, would not require them to increase the gauge size above the three and a quarter; is that correct?

MS. STIRRATT: That is correct.

MR. FREEMAN: They may deem that it's a wise thing to do, but it's not required.

CHAIRMAN LAPOINTE: Joe, I have a question about that. From a law enforcement perspective, that would be difficult, wouldn't it?

MR. FESSENDEN: Yes.

CHAIRMAN LAPOINTE: The answer was yes, he said. Gil Pope.

MR. GIL POPE: Thank you, Mr. Chairman. I guess a motion to table it right now until *de minimis* is defined a little better would be something I would like to put forth.

CHAIRMAN LAPOINTE: Second, Pat Augustine. A motion to table is not debatable. Do people need time to caucus? I don't see any indications of a need to caucus. All those board members in favor of the motion to table until -- well, actually he said until staff had time to clarify.

MR. POPE: Yes.

CHAIRMAN LAPOINTE: Which I will take to mean the next meeting? Heather.

MS. STIRRATT: I'm not clear about what I need to clarify. If someone could please tell me that, then I will certainly go back to the drawing board and do that.

CHAIRMAN LAPOINTE: I think what we would like to clarify is two things. Bruce's question about how changes would be made to -- if you were

granted *de minimis* status and you made changes that were area management specific, how that would impact your status; and further, the impact of *de minimis* just making states bound by those coastwide requirements and how that interacts with an area management scheme. Is that accurate?

MR. POPE: That's good.

CHAIRMAN LAPOINTE: And we will work with staff on that and we will discuss it, I guess, at the next meeting. Other questions? Up here is a motion to table and it's non-debatable. Other clarifications that are needed? All those in favor of the motion to table, please raise their right hands, six; all opposed; any abstentions, one abstention; any null votes, one null vote. The motion carried. The next issue on the plan review team report; we had two states that we had where the plan review team asked questions: New Jersey about vessel upgrades and Connecticut about people being allowed to fish the vessels of other license holders or the traps of other license holders for up to 30 trips. Does it make sense to cover those one by one and then after lunch we'll get to New York and Massachusetts, those other issues? Ernie, can we discuss Connecticut? Perhaps before we get started, I'll just have Heather refresh us on what the issue is.

MS. STIRRATT: Specifically, an excerpt was provided in the plan review team's report on Connecticut's state license, lobster pot limit licenses. It says that a licensee may fish pots with the tags of another licensee for as many as 30 fishing trips in a year without the commissioner's approval. A licensee may fish pots with the tags of another licensee for more than 30 fishing trips in a year only with the commissioner's written approval, provided not more than one such approval shall be issued to a licensee at any one time. The commissioner shall deny such written approval unless the licensee applying therefore demonstrates that he is a partner, employer, employee, or family member of the other licensee or he is assisting the licensee who cannot fish his own pots due to his own verified and substantiated medical condition. The plan review team noted that 30 trips is a substantial period of time without approval. The plan review team questioned whether or not the commissioner should be approving these exemptions from day one. The plan review team questioned whether the state is keeping track or how the state is keeping track of how many individuals are allowed to do this. The plan review team questioned who is enforcing and monitoring this situation and what type of documentation would be provided so as to allow

one individual an exemption under a doctor's note or so on.

CHAIRMAN LAPOINTE: Ernie.

MR. BECKWITH: Thank you, Mr. Chairman. I would ask the question what's the issue because what's happening -- what this rule does, it allows someone to fish someone else's traps, not take the tags from someone else and put them on his own traps, but it's being done to deal with situations where a fisherman is injured or sick and his traps are out there. I'm sure this is going on in other states. Fishermen have their friends pull their traps while they're sick or while their boat is broken down until he gets a new shaft or bearing or whatever. I think it's a very common practice. This should not increase fishing effort. It should not do any harm to the fishery. Now the other part of it -- and I must admit the record keeping and the tracking part of it is loose. The 30 trips is extremely loose. We're not actually -- we don't have any system to keep track of that other than our law enforcement people are out there on a daily basis; and if they see someone else pulling someone else's traps, and you can see that very, very easily because all the buoys have different colors and markings on them, they'll just check them out. But, a person cannot pull another fisherman's traps unless he has a letter from that other fisherman authorizing him to do that. We have them put in there a period of time when they're going to allow that to go on. The other aspect of it was the commissioner can give permission to fishermen to pull each other's traps. One of the major reasons here was there are a lot of family businesses out there, father and son. They both have a valid trap allocation from the state of Connecticut. They may only fish one vessel and so they go out and they pull each other's traps as a daily, routine operation, and I'm sure this practice goes on in other states also. So, quite frankly, I don't see what the issue here is. I don't see there's anything in the plan that we're violating anything in the plan that prohibits fishermen from doing that.

MS. STIRRATT: You're correct, Ernie, there's nothing in there that says specifically that. The concern was that this would provide an incentive or a loophole, perhaps, to get around trap limits as they are established by the plan. The plan review team, as I noted earlier in the powerpoint presentation, simply wanted to note these questions for the record and have the state respond.

CHAIRMAN LAPOINTE: Bruce Freeman and then Gerry Carvalho.

MR. FREEMAN: Ernie, this situation that occurs in Connecticut, was that in place prior to any lobster regulation? I mean, is this a long-term practice? Is this something that --

MR. BECKWITH: Yes. Yes, it has been a long-term practice and it's been in our rules for a long, long time. We somewhat modified it with the trap tag system, but the basic rule has been in place for a long time.

CHAIRMAN LAPOINTE: Gerry Carvalho.

MR. GERRY CARVALHO: Thank you, Mr. Chairman. What is the current policy -- and perhaps Harry can answer this -- in federal waters because we had, in one instance, an arrest where a father was helping the son haul his son's gear, two different vessels, and he was arrested for it by the feds?

CHAIRMAN LAPOINTE: Harry, can you clarify?

MR. MEARS: It's very important, Gerry, to distinguish the fact that the federal government licenses the vessel, whereas in Ernie's case the state of Connecticut licenses the individual. In the case where an individual becomes ill, cannot use his vessel, this is not allowed by federal regulations other than a specific request for exemption from the federal regulations during which another vessel, during a 30-day window, may retrieve the gear, but not fish the gear. The other occurrence is on a federally permitted vessel, if the owner/operator becomes ill, we again have a procedure whereby an alternate operator can, in this case, fish the traps, but it must use the vessel which is federally permitted. We don't have an exact analogy here even though the issues are quite related.

CHAIRMAN LAPOINTE: Other questions or comments? Joe Fessenden.

MR. FESSENDEN: Up in Maine, we're very familiar with this. We call it a medical or a breakdown exception. The trap limit, the way we understand it, the traps are assigned to the vessel. So, for example, in Area 1 it's 800 traps per vessel and you can't fish more than 800 traps off a boat. So if two people are fishing off that boat, you're still limited to 800 traps. So if there's a medical situation or a breakdown, our marine patrol officers can give permission, but it's for a very short period of time, and it's exempted by letter and it's monitored very closely. I think the concern I would

have as a law enforcement officer if this wasn't controlled, there wasn't some paperwork accompanying this practice, you could have somebody abusing that privilege pretty easily with either breakdowns or medical situations. So I would be a little concerned about that practice. I know we take a lot of effort in monitoring breakdowns or medical situations. We have 7,000 lobstermen, so it's a job.

CHAIRMAN LAPOINTE: Bill Adler and then Gil Pope.

MR. ADLER: Thank you, Mr. Chairman. We had a similar situation where we had a breakdown with the federal issue here, and they could only bring the traps in. He wanted, I think, to use a boat just to haul his gear and I suggested at the time that there would be a way that you could put restrictions on so it wouldn't be abused, but would allow for that type of an emergency that would be non-reoccurring and details. And that hasn't been fixed, I know, in the federal world yet, so it's unfortunate. It should be fixed.

CHAIRMAN LAPOINTE: But the federal issue isn't at play here. It strikes me that, with Ernie's explanation, what you've developed is a system that works for Connecticut similar to what all our states, I suspect, have done and we might want to, I mean, just ask in time whether in fact states think there is a growing trend that might suggest some abuse, but without further comment, I'll move to the next agenda item. The next item was New Jersey and the vessel upgrade provisions. Heather, could you refresh us on that, please?

MS. STIRRATT: According to Addendum III, there is a vessel upgrade provision that's listed under Area 5. That provision was put into place earlier this year and is now required, or will be required, as of July 1, 2002, as a compliance issue. Specifically, the language under that section is all vessels authorized to fish for lobster with traps in Area 5 shall be limited to a 10 percent increase in length and a 20 percent increase in horsepower through upgrading or replacement. That was, again, approved in February of this year. In the annual report, which was supplied by the state of New Jersey, there was a note on the very last page, so you can even reference it -- it's included in your packet -- stating that the state would plan upon removing that provision from their regulations. It's my understanding, in speaking with Bruce Freeman about this issue, that those regulations have already been adopted by the state, and that at this point there is an interest at least on his part, and he can speak directly to this, to remove that

provision from Addendum III. I mean, this gets back to the issue of once a state has implemented regulations, how can it in fact remove those regulations as a less restrictive act. That, I think, is something that the board will have to struggle with, but I would defer to Bruce for some comment on the situation.

CHAIRMAN LAPOINTE: Bruce.

MR. FREEMAN: Thank you. This is a situation where we had a difficult time trying to accommodate our historical fishermen. There were about six fishermen in our state who fished both the offshore area of Area 5 as well as Area 3. However, the way they operated, they only fished for three months a year in Area 3; sometimes only fished a month and sometimes only a few weeks. It depends on the conditions. Under the present rules, unless they qualify for 25,000 pounds, which they didn't have records of in Area 3, they would be eliminated. These fishermen, for years, had fished and now because of our lobster area management, they would be eliminated from a traditional fishery. We had worked out at a LCMT 5 meeting with representative advisors from Area 3 several ways this could be rectified, and one was the five-mile overlap area, which really took into consideration the same situation that occurred in Virginia and Maryland, but it did not apply to New Jersey fishermen simply because of the configuration of the coast. At that time, there was an agreement that a fisherman south of 39/30 would be given consideration of having less than the 25,000 pounds, and they could show a history of fishing that area, that they would be allowed to continue fishing Area 3, but would not allow their vessels to be upgraded. When this situation came back to the board, the provision for 39/30 was not agreed to by LCMT 3 and therefore that was not considered for the regulations. Nevertheless, the vessel upgrade was approved and it was an agreement that these two would go hand in hand. New Jersey, in good faith, started the process of putting regulations in place that would allow the fishermen to fish in that area. It does take us anywhere from six to nine months to put regulations in place and by the time we did have them in place, then the consideration -- two things. One is LCMT 3 did away with the vessel upgrade. That was a two-year provision that ended, that sunsetted. So New Jersey was the only state that had a vessel upgrade prohibition, and we are the only state that disallows any vessel upgrade of any state from Maine to North Carolina. It's my understanding it was simply a technical oversight that the vessel upgrade provision wasn't taken out in February when the boundary overlap was not voted on, this 39/30. Now, speaking



with Heather, she indicates -- and I think she is correct - - technically, if we wanted a change, we're going to have to ask the board for a technical addendum to go through to allow us to take away a provision that we're the only state that has because, again, if we eliminate that, it will be less conservative over what we have. Our rule, however, in the state applies to the entire state, not just to Area 5, so we prohibit vessel upgrades in Area 4, Area 5, and Area 3, and, again, no other state has such a provision. We see it as a total waste of time of the staff of going through a technical addendum just to drop this provision.

CHAIRMAN LAPOINTE: Questions or comments for Bruce? I don't think staff was saying that you needed to do it. They're raising it as an issue because they are supposed to review the plan.

MR. FREEMAN: No, that's true. I don't want to characterize it as -- Heather, I think, is very sympathetic. I mean, she's the one going to do the work so she's very sympathetic. However, relative to the way the plan is stated, she wants to make certain the board is very comfortable in taking action before they're required to go through a lot of work for what we consider is simply a technical oversight that should have been eliminated back in February and it simply wasn't. Now, again, as I indicated, we're in the process, because we thought this would be eliminated, of putting a rule in place to void this provision. We have had discussions with people in Area 3 and I think the feeling -- and Dave Spencer reported on this a number of times -- they would like to see this provision, but under the federal rule they weren't going to implement such a provision, and therefore LCMT 3 has simply, after two years, allowed that provision to lapse. But, our regulations didn't lapse in two years. Our understanding is it would remain in place, and therefore we put our regulation in place before it was required by the board. We did not have a sunset provision.

CHAIRMAN LAPOINTE: Questions or comments for Bruce? Because this is minor, is there objection to -- and, Heather, again, the PRT did the right thing in bringing this up. Is there objection to New Jersey carrying forward? Do we even need to do a technical clarification when there is another addendum?

MR. ROBERT E. BEAL: I guess you're asking me since you're looking at me.

CHAIRMAN LAPOINTE: I'm asking you.

MR. BEAL: The technical addendum, under the ISFMP charter, is supposed to be used for very specific things, basically fixing mistakes or fixing oversights as addenda were being developed through the policy board. I haven't gone back through the records to really determine if there's a record that's been put together as far as we intended to take this provision out of the Area 5 management program; however, we didn't do it, it was an oversight, those sorts of things. I don't know if there's the record to state that. We can easily go back and look at that; and if there's not, we probably have to go through the full, formal addendum process, which really isn't that much of a larger process than a technical addendum. There's probably not going to be -- there may or may not be a whole lot of public concerns. A public comment period and a number of public hearings may not be that difficult, and it can be a relatively short document to do this, if that's the course the board wants to take.

CHAIRMAN LAPOINTE: Is there objection to piggy backing this on the next addendum coming down the pipeline? It strikes me that a clarification is good, but we don't want to have a full addendum process. I mean, I know what happens in Maine. They say if there's an addendum going on, we want to have a public hearing. I don't want to selfishly have a public hearing about a provision that impacts New Jersey like this. Heather.

MS. STIRRATT: I would just like to raise some concerns about the timing of the next addendum. I'm not sure when in fact the state plans on removing this regulation from the books. Addendum III requires that it be in place by July 1st. The next addendum clearly is not going to be done before that date so it would be a compliance issue, and I would just ask for some direction from the board as to how we proceed with that concern.

CHAIRMAN LAPOINTE: Can staff do a technical addendum? Do we have to take all addenda to public hearing or is this --

MR. BEAL: No, addenda do not have to go to public hearing. It's up to the individual states whether they do or do not want to have a hearing on an addendum.

CHAIRMAN LAPOINTE: It strikes me that this is about a one-page addendum if we in fact do a technical clarification. Is there objection to staff preparing a technical addendum to get this done? Any public comment on that? Seeing none and seeing

people shaking their head with no objection, that is what we'll direct staff to do. We'll bring that back to the board for the next meeting just so people can look at it, but, again, this should be simple. It's 12:25. We are supposed to break for lunch at 12:30, so I will break at the scheduled hour. Come back at 1:30 and we'll take up the other two items. That is New York and the Commonwealth of Massachusetts and compliance with Addendum II.

(Whereupon, the meeting recessed at 12:25 o'clock p.m., May 20, 2002.)

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#### MONDAY AFTERNOON SESSION

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The American Lobster Management Board of the Atlantic States Marine Fisheries Commission convened in the Monticello Room of the Swissotel Washington, The Watergate, Washington, D.C., Monday, May 20, 2002, and was called to order at 1:35 o'clock p.m. by Chairman George LaPointe.

CHAIRMAN LAPOINTE: Good afternoon. You are at a board meeting of the American Lobster Board of the Atlantic States Commission. We are going to go to Agenda Item 7 again in a moment. I have had a couple people ask for a bit of clarification on the advisory panel's discussion about most restrictive, so I put that under Agenda Item E under Other Business, just so folks know. We're going back to the plan review team. Before lunch we said we would return to the Commonwealth of Massachusetts and the state of New York. I will ask Heather to review for us again, to start this discussion, the issue pertaining to Massachusetts. We'll deal with that and then deal with New York.

MS. STIRRATT: To review, the plan review team has reported that it expressed concern about the lacking implementation of the gauge size increases, approximately 1/32 of an inch required under Addendum II. Addendum II requires a minimum gauge increase in Area 2 and the Outer Cape Cod. The required minimum gauge size for these areas is 3-9/32

as of December 31st of last year. As such, the plan review team is requesting that the board take some action on this non-compliance issue and certainly some type of comment from the state of Massachusetts in this regard is warranted.

CHAIRMAN LAPOINTE: Paul Diodati, if you will.

MR. DIODATI: Thanks, George. We talked a little bit about this during our pre-board telephone conference, and what I told the board members present then -- and I'll repeat because there were not a lot of people there in on the call, yourself included. I hope you're feeling better, George. We were out of compliance with Addendum II primarily because of statutory reasons within the Commonwealth. We do not have the legal provisions in place to increase our minimum size, and that's changed very recently, as of about six weeks ago. About six weeks ago legislation was passed that allows the Division of Marine Fisheries to make recommendations for changes, and we can be at different sizes on our borders and different sizes with our neighboring states. I still did not go ahead and make the recommendation to my Massachusetts Marine Fisheries Advisory Commission to make those changes because I had bigger concerns about Addendum III overall. Looking at all four areas within my state and the various components of all four area plans that come together in my state, I had some concerns about whether or not it was going to be an effective plan administratively or in an enforcement sense or even biologically in terms of monitoring the effects of the plan. So that was the reason why I decided to pass for the time being and continue with status quo until I've had the opportunity to explore some other avenues, different strategies, perhaps an opportunity to come up with a uniform plan for my state. At this point, yes, I suppose we are out of compliance with Addendum II. I suspect there may be some other states also because I imagine that there are other states that have Area 2 fishermen, that check off Area 2 fishermen and fish in other states. Is that probably true? So, I'm probably not the only state that would be out of compliance then or is that a misunderstanding?

MS. STIRRATT: The compliance requirement in the FMP is that states implement the area regulations for those waters adjacent to their states, and so with regard to Area 2 and the increased gauge limit, I believe Massachusetts is the only state with an issue in that regard.

MR. DIODATI: So even if a fisherman fishes

in another state, as long as it's not adjacent to them, they can check off any area that they want?

MS. STIRRATT: That's correct.

MR. DIODATI: I see. In any case I'm prepared to make some recommendations to my marine advisory commission at our next meeting, which is the first week of June. And, assuming that they're going to receive my recommendations positively and approve them, our regulation changes could be put into effect by June 20th. At this point, my responsibility as to exactly what I'm going to do and what I'm going to recommend to my commission is really to my marine advisory commission first, so I prefer waiting until I address them and make my recommendations to them. But all I can do is assure the board that at that time, by June 20th, Massachusetts will have regulations in place that will make us compliant or conservation equivalent to the plan. It may not be everything that you have in Addendum III. But, again, I still have some concerns. I think the major components of Addendum III will be implemented. I do have some major concerns and I'm willing to discuss those too because I'm going to ask the board for some assurances on Addendum III, what it does, what it's supposed to do, and when it's going to do it. So unless you have any more questions of me, I guess --

CHAIRMAN LAPOINTE: It strikes me that the question before us isn't Addendum III today, although that's been raised as an issue. The question before us is compliance with Addendum II. Are there questions for Paul or for staff? John Nelson.

MR. NELSON: Well, this goes back again to this morning's discussion where we had -- and if we don't want to take it up here, George, that's fine. I think we should have our discussion continue as far as what are we going to do or what are states going to do about permit holders that do check off other areas that are not adjacent areas. And as I mentioned earlier this morning, we went under the impression that if we've got folks that are saying they're going to fish in Area 2, that therefore we needed to put in some language that dealt with that so that we had whatever gauge increase was appropriate for those folks to be fishing under and landing in New Hampshire. I can see some areas being fished and then coming back into our state; and if a state hasn't addressed that, is that a loophole that we need to be aware of and deal with?

CHAIRMAN LAPOINTE: I recall from this morning's discussion that we said we were going to

look at what you've done and what Gordon has done and recommend those to other states because it in fact is an issue they have to deal with, but that's not the issue before us right now. The issue before us is the plan review team report about the Commonwealth specifically. We'll deal with New York as soon as we're done with this discussion. Pat White.

MR. WHITE: Technically, as we go forward with this, and now we're talking about Addendum II only?

CHAIRMAN LAPOINTE: That is correct.

MR. WHITE: How can the state of Massachusetts come forward with a plan on whatever he said, June 20th, that would not then have been gone through the technical committee, plan review team, LCMT's, or Lobster Advisory Committee? I don't see how anything could be done in that time frame.

CHAIRMAN LAPOINTE: In recalling how this has occurred at other times, the board will deal with this issue as they see fit. Paul will then go back to his marine advisory council, go back to his state, and come up with a plan that he thinks he needs to do. He will then have to come back to this board and to the commission and whatever he proposes. If he proposes, in the case of Addendum II, a thirty-secondth of an inch increase in the size limit in Area 2 and the Outer Cape, he is in compliance. That doesn't need technical committee review. If he comes up with something else, then we'll need to have review of whatever comes up.

MR. WHITE: Well, I guess that was my question then. If it isn't something that then brought him back into compliance, that was already in Addendum II, what's the time frame for the technical committee to analyze an alternative plan?

CHAIRMAN LAPOINTE: We have to see what is there first. They can't analyze a plan until Paul comes up with something, or the Commonwealth, I apologize, and then we'll react thereafter. How we meet, when we meet, I'm not sure. If in fact the Commonwealth came up with a proposal by the 20th of June, there's plenty of time -- I suspect there's plenty of time for the technical committee in particular and the advisory panel to look at that if they need to to get the appropriate reviews to come back to the board. David Spencer.

MR. SPENCER: Thank you, Mr. Chairman.

I just want to add something to the discussion. I would hope that the appropriate LCMT's are informed and kept involved in this and it doesn't become just a state and board situation. Thank you.

CHAIRMAN LAPOINTE: That would be my intention. Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. Heather, could you explain to me how Addendum II we're out of compliance with? It seems to me that at the last meeting, when everybody basically hadn't really done it yet, except maybe one state had done it, I thought we made some adjustments so that we could get caught up without everybody being out of compliance. How did that work?

CHAIRMAN LAPOINTE: It's my recollection from the last meeting, that when we made an adjustment to the first of July, that was for Addendum III components and not Addendum II because Addendum II had been dealt with last year some time, so that all the adjustments to the compliance schedule from March 1, 2002, to July 1, 2002, were solely those Addendum III items and not Addendum II.

MR. ADLER: Okay, but the gauge increases in Addendum III were the same ones in Addendum II?

CHAIRMAN LAPOINTE: Addendum II contained specific increases for specific areas, and those are what the plan review team has said that Massachusetts is out of compliance with the plan on. The gauge increases in Addendum III may be the same sizes, but they're for different areas, Bill. Area 2 and the Outer Cape are what we're talking about with the gauge increase before us today.

MR. ADLER: Right and that was in Addendum III?

CHAIRMAN LAPOINTE: That was in Addendum II.

MR. ADLER: As well, that's right.

MS. STIRRATT: Addendum II specifically specifies that for Area 2 and the Outer Cape, no later than the end of 2001, which would have been December 31st of 2001, there had to have been a 1/32 of an inch gauge size increase in those areas. Addendum III, which was approved in February of this year, does not speak to the gauge size increases in any year beyond 2001.

MR. ADLER: I thought that we faced this in February and made an adjustment to this July so that we wouldn't technically be all out of whack, but okay.

CHAIRMAN LAPOINTE: Other board questions or comments? Mark Gibson.

MR. GIBSON: I think this is a simpler issue than everyone else does. Addendum II said what these three areas were supposed to do. One has done it and is left hanging out there. The other two have to. I think this board needs to render a non-compliance finding and begin that process. If and when Addendum III areas run up against their time schedule and have a problem, then we'll take that one up too.

CHAIRMAN LAPOINTE: And do you have a motion to that effect, if you want to get things started.

MR. GIBSON: Sure, if you're ready to hear one, unless you want more discussion.

CHAIRMAN LAPOINTE: Mark, please go ahead.

MR. GIBSON: Okay. Well, I would move that this board find the Commonwealth of Massachusetts out of compliance with the terms of Addendum II, that they have not implemented the 1/32 gauge increase off Area 2 and the Outer Cape.

CHAIRMAN LAPOINTE: And the motion of non-compliance I believe is also supposed to -- actually, Bob Beal, please review with us what specifically in the charter is supposed to be contained in this action.

MR. BEAL: There's a couple of wording things we need to include and we've kind of worked up what we anticipated what might happen here. What it has to have is a recommendation to the policy board to find the Commonwealth out of compliance if that's the way we're going with this motion. The other thing the motion needs to have is what is included here in the last sentence, which is what the Commonwealth of Massachusetts needs to do to come back into compliance with Addendum II to the plan. So those are the two things in there as well as what they haven't done.

CHAIRMAN LAPOINTE: Is there a second to this motion?

REPRESENTATIVE DAVID ETNIER:  
Second.

CHAIRMAN LAPOINTE: Seconded by David Etnier. Discussion? Pat White and then John Nelson.

MR. WHITE: Didn't I understand thought that Area 2 had -- well, maybe not all of Area 2. Rhode Island has gone up on their gauge, so they are in compliance, but it's not the whole of Area 2?

CHAIRMAN LAPOINTE: This is dealing with the actions that the Commonwealth of Massachusetts has taken. I'll ask a question. When we've done compliance issues in the past, I believe we've also talked about a time certain, in a recommendation to the Secretary, when for recommended action; whether we do things right away or whether we in fact ask that the issue be held off until after the Commonwealth takes action. Bob, please.

MR. BEAL: Yes, there's a couple of different ways that the timing can go. The first is the board can say as of a certain date the Commonwealth will be found out of compliance. I didn't get the gist of that from what Mark Gibson was saying. I think he was saying we should go ahead and initiate this process now. So the other end of the equation is that once the commission goes through all of its steps, once the Secretary of Commerce and Interior make their decision on what to do regarding this issue, if they were to intend on implementing a moratorium, there's a six-month waiting period that the Secretaries can elect to use prior to implementing a moratorium on the fishery. So, in some of these motions in the past, we've made a recommendation that the Secretaries employ the six-month waiting period or delay of implementation of the moratorium before anything occurs. That is one more thing that the board has some latitude to deal with. The other thing that I forgot to mention earlier, and I think would make this a cleaner motion, is that in the charter there's a mention of since Massachusetts, in this case, hasn't implemented this 1/32 of an inch increase, how does this jeopardize the conservation and effectiveness of the fishery management plan is kind of the reason for the state being out of compliance and that also needs to probably be included in the motion so we can -- if the board has any comments on how they would like to capture that in a quick sentence, we can include that in the motion as well.

CHAIRMAN LAPOINTE: And if it's not included in the motion, it would certainly be included in

correspondence with the Secretary of Commerce.

MR. BEAL: Exactly.

CHAIRMAN LAPOINTE: Questions? John Nelson.

MR. NELSON: Thank you, Mr. Chairman. I think that your comments and Bob's addressed what I was going to suggest to the motioner, and that is having heard from Paul that he had a legislative problem in putting those measures in place earlier and therefore that has been resolved, and he's planning on moving ahead in June, maybe it would be appropriate that we use a date such as, and I'll just use July 1st, that they would be found out of compliance if those measures are not in place by July 1st, and so we don't have to go through a lot of paperwork when they may be in compliance within three or four weeks.

CHAIRMAN LAPOINTE: And seconder?

MR. GIBSON: I guess I would like to hear from Paul again. I was a bit concerned that there was discussion about alternate plans and potentially conservation equivalency. If I was assured that this package that was going to go before his commission explicitly contains a gauge increase for these areas, I would be receptive to that setting sometime certain down the road so we could avoid generating this beginning of a paper trail. If that's not the intention, then, no, I wouldn't be supportive of that.

CHAIRMAN LAPOINTE: Paul, do you want to respond and then I'll take Gordon.

MR. DIODATI: I can only say that it's my intention to make the recommendations before my advisory commission the first week of June, that if my proposals are approved by them, our regulation will go into effect by June 20th, and we'll be in full compliance with Addendum II by then. But, could I be so presumptuous to assume that my commission is going to approve everything I recommend, I can't do that. We have a pretty good relationship. They've been very, very involved in this particular plan and they're going to, I think, be sensitive to the needs of the commission and this interstate process. But, again, I'm not going to give you a hundred percent guarantee that they're going to go along with me, but I think that we'll be in compliance by June 20th. That's all I can tell you.

CHAIRMAN LAPOINTE: Gordon.

MR. COLVIN: A question, Mr. Chairman. If this motion were to pass, what would be the timing of the sequence of events thereafter?

CHAIRMAN LAPOINTE: I think that's what we're discussing now.

MR. COLVIN: I mean, if it were to pass as is, period, what's next and when?

CHAIRMAN LAPOINTE: Robert.

MR. BEAL: The policy board would take it up on Wednesday afternoon, followed by the full commission later that same afternoon.

MR. COLVIN: Thank you. A couple of comments. Let me say first that on the facts that prevail coming into this meeting, I do support the motion. I have some questions in my mind about timing, I think similar to what John Nelson just suggested.

And at the outset, I want to say that I thought that Paul's comments about Massachusetts DMF's intentions and his schedule is extremely helpful to me, and I hope it's helpful to other members of the board in terms of looking ahead on this difficult situation. I can appreciate that the Commonwealth got held up on the Addendum II stuff because of the need to enact state legislation; and having chaired the board during part of the time when that addendum was adopted and being implemented, I know it was clear through that process what a lift it was to get that legislation enacted, and I do appreciate that. But it did close in on the time and it's pretty clear now that the Addendum II situation now gets wrapped up into the reservations that we've learned of with respect to Addendum III. But the timing is pretty helpful and I think it brings us, hopefully, to a clarification of everything prior to the next scheduled meeting of this body. I was going to suggest one of two things: One, a motion along the lines of Mr. Nelson's that would be acted on at this meeting all the way through, but that deferred an action pending a final review for compliance by this board at its next meeting, or, alternatively, laying this motion on the table. I think my preference would be the former route because it enables the commission to act now and the commission may not be able to act in July. But in either event, before anything goes to the Secretary, I would be anxious to know the outcome of the DMF recommendations and their council's actions.

CHAIRMAN LAPOINTE: For clarification, the next board meeting, I believe, is in August; is it not?

I had David Etnier and then Jerry Carvalho.

REPRESENTATIVE ETNIER: Thank you, George. While I like Gordon's suggestion, but I also shared Mark's earlier comments. I shared his concern relative to the Commonwealth and their development of a plan, and this goes back to David Spencer's comment about the LCMT's and everything. I wanted to make sure that there was full involvement of the LCMT's and obviously the technical committee as well and not coming up with something out of whole cloth, as it were, in an abbreviated time frame and the process concerns, but I think Gordon's got a reasonable compromise position, taking into consideration John's good points as well, and maybe there's some middle ground here.

CHAIRMAN LAPOINTE: Gerry.

MR. CARVALHO: It's my understanding, Mr. Chairman, that the management board has to provide the justification to the policy board as to why Massachusetts failure to comply threatens the plan and a statement has to be submitted to that effect from the management board to the policy board. I assume that same statement would be forwarded then from there, but the requirement lies from this management board to the policy board.

MR. POPE: In writing, I think.

MR. CARVALHO: In writing. I believe that's what the charter says.

CHAIRMAN LAPOINTE: We will deal with that issue. Staff is reviewing the charter as we speak. Other comments on the timing? Does Gordon's suggestion have merit, and I believe that was that a non-compliance finding be voted on today, be forwarded to the policy board with whatever is required by the charter, and then we -- I don't know the correct term, but hold that or not recommend action by the Secretary of Commerce until after the 20th of June.

MR. GIBSON: Again, once the board renders the finding to this effect, the next action for it to be taken up by the policy board, right?

CHAIRMAN LAPOINTE: That's correct, which will occur on Wednesday.

MR. GIBSON: Under the delayed trip wire, when would we contemplate that the policy board would hear this?

CHAIRMAN LAPOINTE: The policy board would follow through this week.

MR. GIBSON: Follow through this week, okay.

CHAIRMAN LAPOINTE: And so we would have, depending on the outcome of this vote and if there's a finding of non-compliance, and the outcome of the policy board vote, all that action would be taken, and then we would see what happened in June with the Massachusetts Marine Fisheries Commission.

MR. GIBSON: Yes, I mean, I think it's a reasonable compromise. I understand Paul's need to respect his commission and not presuppose what their actions might be. I just wanted to see if I could get him to say clearly that part of his proposal would be these gauge increases. He's declining to do that for whatever reason and I'll respect those, but I think if we take action today and the policy board follows through with action this week, but there is a delayed trip wire such that we can then wait and see what Massachusetts does before the next set of steps fall, then that would be fine with me.

CHAIRMAN LAPOINTE: The seconder of the motion, is that acceptable as well?

REPRESENTATIVE ETNIER: Yes, it is.

CHAIRMAN LAPOINTE: We'll need an addition to the motion that -- and help me out, board members, when we've done this in the past. We would have a finding -- and, again, depending on what the policy board did, if there's a finding of non-compliance, would we hold the finding of non-compliance with the commission until July or do we send it to the Secretary and not ask for action to be taken until the first of July? Bob.

MR. BEAL: Well, there's a couple of things in the charter that may be troubling or maybe we could creatively get around them. There's a series of steps that once a management board sends an out-of-compliance motion forward, a clock starts running where the policy board has 30 days to act on this motion. Then within 30 days of that motion, the full commission has 30 days to act and then following that, the commission has 10 days to send a letter forward to the Secretary of Commerce. So there's a number of timing issues that are basically set in stone in the charter and I'm not sure -- I'm just trying to read through the

charter and find out how we can put in the delayed trip wire, as Mark Gibson is calling it, and I don't know if we can do that. I know we can put this decision off until August. The board can put a date certain into this motion which delays the policy board and full commission action until August. But as far as setting something in stone, that the commission holds its letters until June 20th gets a little bit more problematic.

CHAIRMAN LAPOINTE: We have the policy board meeting. It's my understanding we can schedule a meeting of the full commission this week should we need to?

MR. BEAL: It's already scheduled.

CHAIRMAN LAPOINTE: It's already scheduled and so it strikes me that if we move on this motion, we should take those steps this week. We have the option then of sending a letter to the Secretary but asking them -- they've got some leeway in time, do they not? I'm going to get Ernie and then Harry.

MR. BECKWITH: Yes, the question I had, I think the charter, as you said, Bob, says the commission or Vince has got to write the letter within 10 days, and that's the charter. Is there any way that any action by the full commission or the policy board could temporarily amend -- I don't mean amend the charter, but create another time frame or just override the time frame that's in the charter. Is that possible?

CHAIRMAN LAPOINTE: No. Harry and then Pat Augustine.

MR. MEARS: To give a proper perspective to any recommendation made to the Secretary under Section 806 of the Atlantic Coastal Act, a clock does start ticking, and it's a 30-day clock; and to my knowledge, without having legal counsel, I don't think you can vary that 30-day clock once the determination is received. It may be possible. I have never encountered it and I suspect that it would not stop the 30-day clock.

CHAIRMAN LAPOINTE: I don't think people were talking about stopping the 30-day clock. I think after the transmission to the Secretary, the charter allows, in that recommendation section, up to how much time, Bob?

MR. BEAL: Actually, I think the Secretary has a six-month waiting period or leeway prior to implementing the moratorium, if that's the course they choose to take.

CHAIRMAN LAPOINTE: So we could ask the Secretary to use that leeway to not take action until after the Massachusetts Marine Fisheries Commission meets -- well, until they meet and whatever regulations might come out of that meeting are put in place by the 20th of June I believe was the date mentioned.

MR. MEARS: Just one statement, Mr. Chairman. I'm equally sensitive to as much of the logistical workload that would be involved at this level pending what happens at the Massachusetts level. There would be a considerable expenditure of analysis of rule-making regardless of the fact that the date of the implementation can in fact be delayed up to six months. But once the Secretary receives a finding, there is the entire process concerning consulting with the councils, the commission, the state, the Secretary of Interior. That all leads up to the eventual analysis of the situation and the resultant finding in the Federal Register. So my point is equally as sensitive to the logistics of the workload once that notification is in fact sent to the Secretary.

CHAIRMAN LAPOINTE: Ernie and then Gil.

MR. BECKWITH: Yes, I think Harry touched upon some of the comments that I was going to make and the answer to the question I was going to ask. I think the issue here is a burden and a workload on the Service. And I believe what you said, Harry, once that letter goes to the Service, to the two secretaries, that's when the clock starts and that's when the workload starts. I think if we look at the calendar, the policy board is going to meet in a couple, three days and then 10 days after that the letter goes out, and that puts it pretty close to right after the first of June. So we're talking about a couple, three weeks here at the most where the Service would be involved in some work that may be obviated by what the Commonwealth of Massachusetts does. Would the two Services, recognizing that, perhaps not jump into it as quickly and really not get involved heavily in the workload until after the 20th? I know that's a hard question for the answer, but I think if that's possible -- we certainly don't want to overburden the two agencies, but that would be a solution.

MR. MEARS: Essentially a clock begins internally that's predicated upon publishing a Federal Register Notice at the end of that 30-day period. So, no, I mean, maybe to the extent of three days, four days, five days, maybe. But it results in essentially the

immediate initiation of all the consultations and analysis and public comment periods that are required under any circumstance.

CHAIRMAN LAPOINTE: Gil Pope and then Pat and then Gordon and then Ritch White.

MR. POPE: Just a quick question. When did you receive the compliance report from Massachusetts; about how long ago?

CHAIRMAN LAPOINTE: We received a plan review team report from the plan review -- the plan review team report was done when, Heather? A while ago.

MS. STIRRATT: The plan review team report was done -- well, it was actually completed --

CHAIRMAN LAPOINTE: In March, wasn't it?

MS. STIRRATT: No, it was in April. It was following two conference calls. But the report that was submitted by the state of Massachusetts was either right -- it was just after the March 1st deadline, and I could tell you the exact date if I looked back at the report.

CHAIRMAN LAPOINTE: Pat Augustine.

MR. PATRICK AUGUSTINE: Thank you, George, Mr. Chairman. It seems to me that if you read the motion up there that Mr. Gibson made, it's pretty clear that an action wasn't taken that had to be taken, and although the reports were only due in March -- and listening to Mr. Diodati, he is definitely going to present his case to the marine group. But there is no assurance that we are going to have any guarantee that they will indeed meet the requirements of Amendment 2, so we're damned if we do and we're damned if we don't. We may start an action that will trigger a considerable amount of work, but if we shirk our duty of finding the Commonwealth of Massachusetts out of compliance, what's going to prevent us from doing this in every other fishery where we have a state that is not complying? It seems to me we're almost forced to move forward with this. I know Mr. Colvin has a different opinion than I do on this, but it seems to me that unless we have some clear commitment from the Commonwealth, we're literally forced to move forward with an out of compliance. Thank you.

CHAIRMAN LAPOINTE: Thank you, Pat. Gordon.



MR. COLVIN: Plunging headlong into a null vote here, again. It had been my thought earlier, as I indicated, supportive of the motion at the circumstances and set of facts that we are in today, but recognizing what we have heard today, that it would be most helpful if the board and potentially the commission could make a decision and a determination and close the record on that, but find a way to delay the transmission of that determination to the secretaries would be on the one hand helpful in terms of clarifying exactly where the commission is as a matter of policy today, hopefully doing something that is constructive with respect to having the Commonwealth of Massachusetts informed as to what the commission's expectations are, but yet at the same time avoiding the need for lots of people, not the least of whom are, as was pointed out, our partners, the National Marine Fisheries Service, and for that matter our partners in Massachusetts, to do a lot of work that would distract from other things that need to be attended to at this sensitive time. What I've heard, in the course of this discussion, is that we can't do that, that there isn't a way to do what I suggested. And absent a way to do what I suggested, my inclination is to recommend to the board that we defer action on this motion until our next meeting. I say that reluctantly because it had been my preference to take the action today and then suspend its transmission. But if we can't do that, I don't really see an alternative. With that fairly lengthy preamble, Mr. Chairman, I would like to move to table this motion until the board's meeting in August.

CHAIRMAN LAPOINTE: Second by Ritch White. The motion to table is non-debatable. Do states need time to caucus? I'll give states time to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN LAPOINTE: Are we ready? The motion before us is a motion to table until the next meeting, to table the motion of non-compliance for the Commonwealth of Massachusetts. All those states of the motion of tabling, please raise your hand; those states opposing the motion to table, please raise your hand. The motion dies, does it not with a tie? I am going to use the discretion of the chair and take ten minutes to meet with staff to discuss what kind of options we have to make the sequence the right way.

(Whereupon, a short recess was taken.)

CHAIRMAN LAPOINTE: We're ready to get started again. Thank you for your indulgence. Please put the original motion on the board. What was

discussed is changing the motion to say that the Commonwealth would be found out of compliance on the first of July if they haven't taken the action to come back into compliance. The motion would be forwarded to the policy board, with an affirmative vote of this board, if it goes that way. It would be forwarded to the policy board and then the commission. So they wouldn't be found out of compliance and the clock that's in the charter would not kick into place until the first of July, and I believe the amended motion would read: Move that the board recommend to the ISFMP policy board and the commission that the Commonwealth of Massachusetts be found out of compliance with Addendum II to Amendment 3 to the American Lobster FMP if it has failed to implement and enforce the required gauge size increase of 1/32 of an inch for Massachusetts waters of Area 2 and the Outer Cape Cod by July 1, 2002. This increase in gauge size is required to ensure that egg rebuilding targets of the plan are achieved and to maintain effective cooperative management of the lobster resource. In order to come back into compliance, the Commonwealth must fully implement and enforce required gauge size increase for its waters in Area 2 and the Outer Cape Cod. Is that acceptable to the motioner, the maker of the motion who is Mark and David Etnier.

MR. GIBSON: I like the compromise we're moving to here. I guess one question is who will be responsible for determining that the action has taken place and determining not to send a letter. How does that happen procedurally?

CHAIRMAN LAPOINTE: Bob Beal.

MR. BEAL: I think under this scenario, if Massachusetts implements the increase in size limits in Area 2 and the Outer Cape, then that's pretty easy to interpret. If Massachusetts elects to implement something that is conservation equivalent to implementing an increase in gauge size, then it becomes a little bit more difficult, and I think that would probably have to come back to the management board to determine what course of action they want to take and determine if that is equivalent through F, probably subsequent to a technical committee review. So it gets a little bit hairy there.

CHAIRMAN LAPOINTE: We're presupposing a bit what would happen. I would think that on the 20th of June, the Commonwealth can call the commission, or the commission staff on the 21st can call the Commonwealth, determine what regulatory action was taken. This is fairly clear; and if they're

found in compliance, and we hope they are, I would have commission staff communicate to all the board members so that people know. And if they are not in compliance on the first of July, staff would write and send the letter to the Secretary of Commerce.

MS. STIRRATT: Just a question of clarification. Was that action, Paul, intended on June 20th or June 6th?

MR. DIODATI: The vote of my advisory commission is on the sixth and then we need time to get the statute in place. That would be by the 20th or the 21st, right around there. But as I said earlier, it's my intent to be compliant with Addendum II by this date. My commission has more problems with Addendum III than it does Addendum II.

CHAIRMAN LAPOINTE: That means we'll have fun in August as well, but let's stick with the matter at hand.

MR. DIODATI: Well, later today if you give me the opportunity.

CHAIRMAN LAPOINTE: Are there any other questions or comments by board members?

MR. GIBSON: I would just say I accept this amendment as maker.

CHAIRMAN LAPOINTE: David Etnier as seconder?

REPRESENTATIVE ETNIER: I accept it as well.

CHAIRMAN LAPOINTE: Other board comments? Any comments from the audience? Seeing no other comments, we'll take a couple minutes to caucus.

(Whereupon, a caucus was held.)

CHAIRMAN LAPOINTE: Are we ready? The motion is, as we stated, for the board to recommend to the policy board that the Commonwealth of Massachusetts be found out of compliance on the first of July should they not take action to bring them in compliance with Addendum II. All of those states in favor of this motion, please raise your hand; all those opposed to this motion, same sign; abstentions, two abstentions; any null votes. The motion carries. And thanks for your patience in working through that. Paul

Diodati.

MR. DIODATI: Mr. Chairman, as I said earlier in my earlier comments, I felt that Addendum II and Addendum III issues were somewhat linked in at least the way I've reviewed them and with my discussions with my advisory commission back in Massachusetts. We've looked at the whole package and I would like the opportunity sometime today to talk a little bit about Addendum III items because I think that's more of a critical issue for us in terms of the mandates of Addendum III and whether or not we're going to be in compliance with those or whether or not conservational equivalencies will be needed to be discussed.

CHAIRMAN LAPOINTE: We're behind in schedule, Paul. I put that as another business item. I will talk to the board about rearranging other business items at the end so we give some time for that discussion because I think it's important you get the chance to talk to us about that. Heather, could you do the New York PRT issue for review and then we'll ask Gordon for comments?

MS. STIRRATT: Just to review, the state of New York has not implemented the necessary circular escape vent sizes as required under Addendum I. Addendum I provides the specification. That specification is for two circular escape vents with a minimum diameter of 2-7/16 of an inch. The New York regulations currently require circular escape vents which are 2-3/8 inches in diameter and the PRT is simply raising this issue again. It has been one that has been raised in previous PRT reports; and, again, my understanding is that this has been held up because of state legislature issues, and I would defer to the state of New York for further comment.

CHAIRMAN LAPOINTE: Mr. Colvin, please.

MR. COLVIN: Thank you, Mr. Chairman. First of all, let me begin by apologizing to the board for continuing to have this relatively minor issue before you and for our failure to resolve it before now and thereby wasting your time this afternoon. Let me also say that much as I might wish that I could finger our state legislature for this, and I say that without Brian here, but I would say it with Brian here, the state legislature is not responsible for the delay in implementing this rule.

It is our own internal bureaucratic issue. As I've told the board before, there is virtually no intention on the

part of New York state to not implement this requirement. We fully intend through the ordinary process of agency rulemaking. Further, as I've told the board in the past, it's a relatively minor issue because there's very few pots in New York that are fished with circular vents, very few, and I think we've even given some estimate of the number in the past. If you go back to the record of the last board meeting, you'll note that it was my conclusion at that time that the measure was part of a regulatory package that had been reviewed and commented on through the public review process, some parts of which were very controversial and needed to be revised. It was our expectation at that time, based on advice of counsel, that within a very short period of time following that last board meeting, we would adopt very limited parts of that proposed rule, including the circular vent size increase. However, when we got back to New York, Byron and I were informed that somebody had made an error counting days on the calendar and the fact is that the proposed rule had expired and no part of it could be implemented. It was just too late. As a consequence, we've initiated new rulemaking, which we needed to do anyway, to implement the provisions of Addendum III, which I spoke to earlier this morning, along with a number of other fishery management measures, including little issues like fluke, scup, sea bass, and I don't know what else. That will be forwarded for publication in the state register as soon as possible following tomorrow's meeting of the fluke, scup, and sea bass board, and this measure is already part of that package, and we'll go forward on that schedule as a new rule-making initiation. As I indicated, I apologize for keeping this minor matter in front of you and wasting your time with it, but that's where we are.

CHAIRMAN LAPOINTE: Questions for Gordon? Pleasure of the board on this issue? I'm not getting a lot of prompting. It strikes me when we deal with issues of non-compliance, we need to be consistent; and from the chair's perspective, a motion similar to the last motion where we have the commission take action, but no finding of non-compliance be rendered until the first of July would be consistent with the action we took on Massachusetts and make sure that the board treats states fairly. Dennis and then John.

MR. DENNIS ABBOTT: For Gordon, do you have a time certain when you expect this to happen with your rulemaking? I didn't hear you say July 1st, I don't think.

MR. COLVIN: After what has happened with this rule in the past, that would be a very dangerous

thing for me to say. I've already had to eat my words about three times on this particular measure and not because of this measure, but because of other things that are in the rule package with it. But, you know, that aside, if we can get that rule published relatively quickly, it should be in place well before the next board meeting.

MR. ABBOTT: What would be a date that we should put in to give you the most amount of leeway?

MR. COLVIN: July 1 is fine.

CHAIRMAN LAPOINTE: John Nelson. Okay, we have a motion and a second, which I think staff is working to put up on the board. Other questions or comments? The motion was made by Pat White and seconded by Bill Adler; and as soon as we have a motion, we'll read it into the record. While they're working on it, is there public comment on this motion? We have a motion on the board now. The motion -- well, actually, maker of the motion, read that and see if -- no, you don't have to read it publicly; just read it privately for a moment and then I'll read it into the record. All right, are we okay? Thank you. The motion is: Move the board recommend to the ISFMP policy board and the commission that the state of New York be found out of compliance with Addendum I to Amendment 3 to the American Lobster FMP if it has failed to implement the required circular escape vent size increase to 2-7/16 inches in its waters by July 1, 2002. This increase in vent size is required to ensure that the egg rebuilding targets of the plan are achieved and to maintain effective cooperative management of the lobster resource. In order to come back into compliance, the state must fully implement and enforce the required escape vent size increase for its waters. Other discussion on this motion? Harry.

MR. MEARS: Mr. Chairman, I believe the associated discussion has been implicit inasmuch as in the event of non-compliance, notification to the Secretary would not occur until July 1.

CHAIRMAN LAPOINTE: That's correct.

MR. MEARS: But for purposes of the minutes for the meeting, I think it would be helpful to confirm that.

CHAIRMAN LAPOINTE: That is correct. The commission would not find the state of New York, in this case, out of compliance until the first of July.

Should they be out of compliance, the Executive Director or the Chair, whoever is appropriate, would write a letter to the Secretary on the first day of July, if that's a business day. Do states need time to caucus? Seeing people shaking their heads no, all those states in favor of this motion, please raise their hand, 6 in favor; all those states opposed, same sign; abstentions, 2 abstentions; any null votes. The motion carries. Thank you very much. The next agenda item is the Law Enforcement Committee report. Joe Fessenden and Mike Howard.

### **LAW ENFORCEMENT COMMITTEE REPORT**

MR. MIKE HOWARD: Thank you, Mr. Chairman. As a result of the February meeting of 2002, I believe the board requested some clarification on a memo that was sent of law enforcement concerns on Amendment 3. The group of lobster-producing states from New Jersey north, I think it's eight states, and the chairman of the Law Enforcement Committee met via a conference call to discuss the issues and enforceability. The direction was to assess the enforceability of Amendment 3. I think it's well known to members, through the guidelines for resource managers, what issues are enforceable, what laws and rules and regulations are enforceable when it comes to resources and which are less enforceable. So this is not a new issue. When you create multiple areas with multiple size limits, law enforcement is less apt and less likely to fully enforce the rules and regulations. That's where managers have to take that in consideration when they implement a plan, knowing that it is less enforceable when you have multiple areas within the same geographic state or region on one species. Specifically, there's a letter in your packet to Heather Stirratt from the Law Enforcement Committee and it outlines the specific problems and some potential solutions in the future. These can be applied across the board, but because lobster seems to be such an important issue in the Northeast, the specifics were outlined by the Law Enforcement Committee. The officer's ability to verify legality of lobsters will be diminished by placing a burden to prove where those lobsters originated. At-sea enforcement is very difficult for law enforcement to verify where lobsters came from. Dockside, we have to make assumptions based on where the permit is authorized, but we can't guarantee that the lobsters actually came from there. Illegal markets for small lobsters will be created with catchers moving illegal catch through areas where the carapace size is smaller. States like Massachusetts will have as many as three or four different carapace sizes when fully implemented in Amendment 3. Current state laws in all the states are

not compatible with these various size limits as right now there is one single coastwide gauge size or carapace size. In addition to the conservation issues of law enforcement, the marketing issues which law enforcement will have to deal with will be significant. Anybody that can remember Canada, when they had a carapace size which was smaller, the United States Congress took action to say that if it doesn't meet the United States legal size, you can't import it. Well, our states will ultimately -- and if you haven't heard the rumors already -- will most likely set standards which will not prevent marketing of their own lobsters or will not allow the market to be flooded with undersized lobsters. Under Addendum III Massachusetts will have two different V-notch provisions to enforce, creating significant dockside monitoring problems. The V-notch provision under Addendum III specifies where on the lobster it must be, but does not identify how it should look or give it a standard size. This will be left up to states to do and possibly create different V-notch definitions within each of those states. There's also an area with zero tolerance in Area 1 and a limited tolerance in adjacent areas. Addendum III allows for trap tag transfers. The LEC feels that there is insufficient language to safeguard trap tags from being removed in an effort to exceed trap limits. The LEC cannot fully measure the effect that Addendum III will have on enforceability at this time, but in the past they have seen issues like this in other species in other resources, and enforceability is generally weakened and often found ways to violate the laws within the states. We would like the work groups and the board to consider moving towards a uniform, single Atlantic coast minimum carapace size; increase it all together or keep it the same and not create different ones. Where it is necessary to have multiple carapace sizes within a state's boundaries, require the stricter size apply to lobster landed or possessed within that state's boundary. Make transfer of lobsters at sea illegal in most, if not all, circumstances. Review area boundaries in an effort to have them conform to state boundaries to lessen or to increase the enforceability. Instead of having three different areas and three different rules, three different landing rules, V-notch rules, and carapace size within one state, move so that an area conforms with a state boundary. Create a standard V-notch definition and tolerance. And, finally, trap tags should be tamper proof and permanently affixed to traps and only transferred with written authorization. As always, the LEC appreciates the opportunity to comment even though sometimes it seems redundant in what we say. We do understand that the biological processes often create multiple size limits, but we also feel that we have a duty to report on what we can enforce better than

other rules and regulations. I'll defer to Joe Fessenden, who is on the committee.

MR. FESSENDEN: Well, unfortunately, I couldn't make the last meeting in February, but I did read the notes. Actually, I read them a couple times and I got caught reading them again this morning. But I've been at the table here for most of the meetings and right along we've been talking about the enforceability of these regulations and laws. The more they're consistent and uniform, the easier they are to enforce. That's the bottom line. We've been saying that right along so I was kind of surprised to read in the minutes that some of the members of this board didn't quite understand that or get that message in the past. But we've been pretty clear right along that uniformity and consistent laws and regulations are easy to enforce. It's easy for the public to understand and nine times out of ten, the industry accepts a lot of those laws and they're more compliant. But with that, we understand that there's hard decisions that have got to be made and really law enforcement doesn't want to be a scapegoat here. We certainly want to work with the board and have an open mind in the process. But, you know, we want to work with you to enforce these laws and regulations, and I'll be glad to answer any questions.

CHAIRMAN LAPOINTE: Questions for Joe or Mike? Paul Diodati.

MR. DIODATI: It seems to me that the board could not have tried harder to develop a more contrary plan in Addendum III to the law enforcement recommendations, and that is the basis of the problems that I'm having in Massachusetts. It is the root of the problem that my advisory commission -- although Bill is the only one on my commission here, and so is Vito Calomo, but he's not here today, my nine-member commission are all seasoned people in dealing with fisheries management issues and they see some extraordinary inconsistencies in Addendum III, and they've all just been echoed by this gentleman. May the record show that I've never met you before today, but I would like to have the opportunity, as I said earlier, to talk more specifically about Addendum III. Thank you.

CHAIRMAN LAPOINTE: I think, and we've mentioned it in the past, we have acknowledged since the inception of Amendment 3, and the addenda thereafter, that area management is more complex than one size fits all. We have gone down that road for now five years with almost continual input of the Law Enforcement Committee and advisory groups and other groups, and we have built the plan we have now with

that in mind. It strikes me still that the advice is good and that as we continue to move forward, whether it be at the state level or Commonwealth level or when we move forward as a commission, that we should forward this letter to advisory panels, LCMT's, and use it in our own state discussions so that in fact we can balance law enforcement concerns with both the biological and the socioeconomic objectives we're trying to achieve in the plan. Other questions or comments? Audience questions or comments about the Law Enforcement Committee report? Hearing none, we will move to the next agenda item and that is the technical committee report. Carl Wilson.

### **TECHNICAL COMMITTEE REPORT**

MR. CARL WILSON: Thank you, Mr. Chairman. Two quick issues we can get through fairly quickly, and I do not have a formal presentation today. The first I would like to report on is an Area 1 technical advisors meeting that was held on April 19th in New Hampshire. We met to discuss the issue of V-notch compliance, how we can measure that and evaluate that as a tool in the current Addendum III and management schemes. It was an excellent meeting. Actually, we had a strawman document. We did not come to a consensus by any sense of the matter, but we did come to a consensus that -- and this is the question to the board -- is we are asking for clarification on the amendment to the motion to accept the Area 1 plan made last October and specifically the 50 percent V-notching amendment, and that is a question to the board, is looking to clarify what was meant by that. There are different implications as far as the technical evaluation of that measure, depending on how that amendment is carried through. So that is something we can either discuss now, George, or further on and go on to the next issue if you would like or --

CHAIRMAN LAPOINTE: Questions of Carl? Paul Diodati.

MR. DIODATI: Do you want to discuss the 50 percent rule?

MR. WILSON: Yes.

MR. DIODATI: I think it's clear that the intention of that particular motion or the amendment to that motion was to put in some performance criteria so that the benefits of the conservation measures can be determined. That is something that I am going to need to for all of Area 1 and not just for Massachusetts. Whether it's 50 percent or 50 percent of occurrence of

V-notched lobsters in the catch or some other measure that the technical committee would like to suggest, I would like to see the committee come forward with an array of measures that we can determine to be most appropriate to determine whether or not Area 1's plan is meeting the objectives of Addendum III. I've taken a lot of time trying to develop a conservational equivalent to that plan in recent months; and in order to do that, I find that counter measures are very, very significant; for instance, increasing the minimum size and reducing effort. I would have to reduce effort on the order of 50 percent in order to meet the components of Addendum III. Now, what you're telling me is the Area 1 plan is already doing that, that it's equivalent, and I'm going to need some measure of that. You have to convince me of that before I implement the plan as it is, and I don't want to wait until 2008. I'm not going to wait until 2008 and then be faced with the New England groundfish type crisis in my lobster industry because 80 percent of the Massachusetts landings are coming from Area 1. That's why the measure was put in there. I think it's self-explanatory what the measure is. It can be modified. I'm willing to hear some proposals from the technical committee. If there are other measures of success, either they're F-based or V-notch based or some other measure, I would like to see a multitude of measures. But as far as I can tell, the conservation measures for any area, for any plan, to get from where you are now to get to F-10 has some very serious fishing reduction values associated with it. There's no two ways around that. In Area 1, you're going from an F on females from around 0.74 to 0.38. In order to get from that point to that point, you have to have some very serious measures in place. Now I don't know if it's going to happen, but you're going to have to demonstrate to me that it is, and not in 2008. I want to see it in 2003, 2004, 2005, and so on.

MR. WILSON: To get to the question, I think the technical committee can try to help evaluate that, but really the question is trying to clarify what was meant by the 50 percent, and there has been two areas that have been discussed within the technical committee. One is an observed percentage and one is a rate that is used in the egg per recruit model, and I guess the Area 1 advisors were asking the board for a clarification. That has two different implications as far as evaluation and --

MR. DIODATI: I think an observed rate of V-notched lobsters alone is probably not the best way to measure a conservation tool like this because, for instance, you could be V-notching, or in the case of other fisheries tagging fish. It's the same thing. You

could be marking these fish, maybe 30 percent of them, 35 percent of them, and then be incurring them at the rate of 75 or 80 percent in your catch if you're overfishing. Just because you're overfishing, your F is so high, you're going to see almost all the ones that you V-notch. So just seeing them in your catch alone is an indication that -- that could be just an indication of a very high fishing mortality is what I'm saying. So the technical committee needs to sit down, and I would like to hear them come up with some measures, some performance criteria, that is going to assure me in my state and my advisory commission and my industry members that resource is being protected, that the Area 1 plan is a good plan and it's doing what it's supposed to do.

MR. WILSON: I think we can go back. You know, it's still --

MR. DIODATI: No, I'm not asking you to go backwards. I want to go forward.

MR. WILSON: No, I understand that, Paul, but our question again is if the board can give us some guidance on how to approach the motion, the 50 percent motion and then I think using that guidance, that will help us in the evaluation of year 2003, 4, 5, 6, and 7.

CHAIRMAN LAPOINTE: Board members? Paul.

MR. DIODATI: Now, again, the motion that you're referring to, I thought it was explicit for the state of Massachusetts.

CHAIRMAN LAPOINTE: I believe that's correct.

MS. STIRRATT: No.

CHAIRMAN LAPOINTE: But it said if we didn't get 50 percent, Massachusetts would take other action. John Nelson.

MR. NELSON: I think it was amended, Mr. Chairman, so that all entities in Area 1 could take appropriate action.

CHAIRMAN LAPOINTE: Okay, thank you. Ernie Beckwith.

MR. BECKWITH: Do you have the motion so we could hear it?

MS. STIRRATT: The motion is actually included as a footnote in Addendum III. It reads as follows: "The Commonwealth of Massachusetts will monitor the percentage of V-notch, egg-bearing female lobster in commercial catches during 2002. "If the observed percentage does not reach 50 percent by the end of 2002, the Commonwealth will consider additional management measures in 2003 to help achieve the goals of the FMP. At a minimum, all regulations promulgated to implement Addendum III in Management Areas 2, 3, and the Outer Cape Cod will be expanded to include Massachusetts portion of lobster management Area 1. Other entities of Area 1 may also consider additional management measures in 2003 to achieve the goals of Addendum III.

CHAIRMAN LAPOINTE: Carl, other issues?

MR. WILSON: Okay, to the second subject, at the last board meeting, we were asked on the status of our knowledge of vent size increases associated with gauge size increases, and Bruce Estrella from Massachusetts DMF put together a nice paper on kind of our current knowledge. The bottom line is that the technical committee has, in the past, made recommendations for vents associated with gauge increases to 3-11/32. Beyond that point, our available information for selectivity curves for different vents is very limited and would be just extrapolated. Now the Massachusetts DMF has or will initiate a vent study this summer which will provide some hopefully very helpful information as far as that, but we were asked to just update on the status of that. Basically we're very close to our limit of the available information that was by and large collected by the Maine DMR back in the '80's and '90's.

CHAIRMAN LAPOINTE: And Massachusetts DMF will be looking at other vent sizes through the course of this year?

MR. WILSON: Yes, they'll be looking at four different circular and four different rectangular vent sizes.

CHAIRMAN LAPOINTE: Questions or comments about vent sizes? Carl.

MR. WILSON: That's it for the technical committee.

CHAIRMAN LAPOINTE: Other questions?

Ritch White.

MR. G. RITCHIE WHITE: Did we come to a conclusion on the first issue because if a --

CHAIRMAN LAPOINTE: The letter of the motion says observed percentage rate does not reach 50 percent; an observed percentage rate of 50 percent by the end of 2002. That's the letter of the motion.

MR. WHITE: I guess I would make a motion, if appropriate, to have the technical committee come up with a variety of methods to analyze the effectiveness of Amendment 3 in Area 1.

CHAIRMAN LAPOINTE: How does that fit into the observed -- I mean, they asked for a clarification of observed percentages. We can ask them for a bunch of different definitions of observed percentages, but --

MR. WHITE: I think I heard Paul talk about being able to judge whether Amendment 3 in Area 1 is working and that he might use something other than the 50 percent. Did I hear you correctly, Paul?

MR. DIODATI: I think that the board needs to have some performance criteria in place and contingency plans in place to put into effect before 2008 if indeed the performance criteria are not met for Area 1. And, again, I'm looking at Area 1 because 80 percent of Massachusetts lobsters are coming from Area 1. Unfortunately, Maine is landing 80 percent of the lobsters from Area 1, so we're only 20 percent of that, but it's a significant fishery for us. It's a \$70 million a year fishery, and the way I see it there is no performance criteria built into this addendum and into Area 1 or any other areas for that matter. There's no performance criteria that is built into these plans, and I would like some assurances. Before I go through a lot of trouble of implementing any component of Addendum III, I want some assurances from the board that we are going to be measuring the success of this plan on an annual basis, and we are prepared to make changes to this plan before 2008. I'm concerned that 2008 will roll around and the technical committee is going to tell me, well, we need to be at an F-20 or even an F-15. That would be a disaster. You know, you're essentially shutting down your fishery. If you look at what I've looked at to come up with a conservation equivalent to this V-notching program, there are significant actions that you have to take in order to get from F of 4.1 percent, where you are now, to an F of 10 percent in terms of egg production. So it's almost a 50

percent drop in your mortality rate on females alone.

CHAIRMAN LAPOINTE: It strikes me that -  
- I'm taking my chair hat off for a moment -- we are concerned about the effectiveness of the measures in all areas. Other areas have used some effort reductions. And then if you're looking at performance criteria, you should look at all areas and not just Area 1. You should also have the technical committee look at what's the chance of achieving those measures put in, like the 50 percent rate. You have to have achievable measures in there as well to measure those. So you need measurable objectives and you need achievable objectives. You can't go from zero to 50 percent overnight. I don't know what the right answer to that is, but that's the context within which that question probably should be asked. David.

MR. SPENCER: Thank you, Mr. Chairman. If this is the road that the board wants to go down, I would again say that I think the LCMTs should be involved; and perhaps if it is a performance criteria, then it might be cleaner for the technical committee to have those recommendations come from the LCMTs. Thank you.

CHAIRMAN LAPOINTE: Other questions?  
Ernie Beckwith and then Pat White.

MR. BECKWITH: Thank you, Mr. Chairman. Perhaps Paul could help us a little bit here. He's mentioned performance criteria, and we do have some albeit limited performance criteria in the plan. We've got an F-10 which is -- I guess it's our target and threshold, and we have egg production rates for just about every year in there, and those are our criteria. They may not be adequate criteria. We may want to consider targets, different targets, in addition to our threshold, but, Paul, can you help us? What are you thinking about?

MR. DIODATI: I suppose I can make some suggestions to the technical committee, but I would think that they're in a better position to make suggestions back to the board. I would see that as their role. I think what you're calling performance criteria, it's really a paper plan; and from what I see, it doesn't necessarily translate from paper to what's going on on the water or in the water. And, as I said, for Area 1, for me to be compliant with Area 1 and choose some other conservation tool, such as a gauge increase and a trap reduction, I would have to go up to a size of 3-3/8 inches and reduce about 50 percent of the traps in the water. So there you have it. Is the V-notching program

doing something as effective as that? It must be because that's the plan that was approved by the board. So if in fact that plan is going to reduce the fishing mortality by about 50 percent, I think that the technical committee needs to come up with some way to measure that on a yearly basis, what's going on with that fishery, because the Commonwealth has a lot at stake. I can come up and make those suggestions myself, but I think it's best if the technical committee works and provides some recommendations back to the board. But then I would like the board to go ahead and consider a motion to accept those recommendations and contingency plans as well, and what we do if we're not meeting those performance criteria.

CHAIRMAN LAPOINTE: Pat White.

MR. WHITE: Well, I guess this has left me a little more confused than I was in the beginning. We had a technical committee review of this plan that was done incrementally from 2000 to 2007 with the eventual premise that we were meeting the goals of the plan with an interim assessment of at least probably 2003 or 2004. I think what I hear Paul saying is that we need to have a stock assessment every year to better evaluate where we are in this ladder of assent to 10 percent, which I don't think -- you know, having heard this before in many fisheries, I don't think it's realistic that we're going to have that assessment. I don't see how we can have interim annual evaluations of this. My other concern for the Gulf of Maine is with all this talk of a gauge increase, even if we went, and correct me if I'm mistaken, to 3-3/8 gauge in the Gulf of Maine, because of the temperature of the water and everything that we have, we only get one step up the ladder. We're not even close, which is one of the things that we assumed that the V-notching was going to do. So I'm a little confused as to what direction that Paul is trying to lead us in this now.

CHAIRMAN LAPOINTE: I think Paul's saying that he wants some measures along the way. I don't think he said annual assessments, but I don't know that. I'm going to be the chair driving the schedule. We've got a half an hour left on today's agenda. It seems to me that we should ask our members of the technical -- I don't know if they're going to get together -- our members of the technical committee to suggest criteria. We should go back. I want to go back to my staff and talk about what this means not just for Area 1, but for the entire plan. I don't, frankly, either as the chair of the board or the director in Maine, want to revisit our entire planning process. It strikes that's a danger we have to talk about when we talk about this



addendum. Paul.

MR. DIODATI: I can sympathize with you there because that's what I'm doing, George. But I've looked at this V-notching plan very closely and in order for it to work, Gulf of Maine landings are still going to have to drop by about 40 percent over the next several years.

CHAIRMAN LAPOINTE: And they may well do that at their current trend.

MR. DIODATI: Okay. And as a management tool, what you're doing by V-notching a lobster, and then we're putting in a maximum size gauge, so now we're going to protect that lobster and we're not going to get any yield in the fishery from that lobster at all.

CHAIRMAN LAPOINTE: But, again, I think we're trying to revisit the goals of the plan; and if you want to do that for the next half hour and not get to the rest of the agenda items, we can do that.

MR. DIODATI: I would like a charge to the technical committee to go ahead and develop some stringent performance criteria for all the areas, as you pointed out, and I would like the board to be prepared to act on some motions to enforce those at the next meeting.

CHAIRMAN LAPOINTE: David Spencer and then Dave Borden.

MR. SPENCER: Thank you, Mr. Chairman. On behalf of industry, I guess I would like to know where the LCMTs fit into this. In other words, are recommendations just going to come back to the board and the board changes the plans? I think it's very important for industry to know if this is the beginning of the end of the LCMT process. Thank you.

CHAIRMAN LAPOINTE: David Borden.

MR. DAVID V.D. BORDEN: Thank you, Mr. Chairman. As I understand the point that Paul is making, he's making a biological point more than an actual management point. He's saying that he wants the biologists basically to review the competency again of that proposal and ensure that in fact there's some kind of metric that they will hold us to to make sure that we meet the egg production requirements within the plan. What I was going to suggest to him is that he crafted there verbally what would be a good charge; a motion

to the technical committee. And if I can, Paul, why don't I just suggest to you that you make it as a motion and then the board can deliberate on it and the technical committee will come back with some kind of recommendation on it.

CHAIRMAN LAPOINTE: Carl.

MR. WILSON: Two different things; one, yearly performance evaluations or criteria. That is something that we talked about in our April 19th meeting and we could try to develop something. There are periodic performance evaluations, stock assessments. The next one is coming up in 2003 and following that in 2005. At that point, all the different stock assessment areas will be evaluated. And I think, just to take it into context, our document that was presented to the board in August of 2000, which was the LCMT evaluations, we had five kind of -- how to describe it -- blanket statements with the fifth blanket statement saying the predicted egg production values represent an equilibrium state. With the available assessment tools, we estimate that most management measures could take between 10 and 20 years to reach equilibrium, assuming constant recruitment and continuation of the management plans that are proposed or evaluated. So whether if it's just for the Area 1 V-notching plan or the Area 3 trap reduction schedule, our model runs that are currently being conducted assume an equilibrium that could take many, many years to happen. So if you do it on a yearly basis or every five years or so the predicted outcomes, the predicted egg production values could take significantly longer to see that before it's realized in the fishery.

CHAIRMAN LAPOINTE: Other questions or comments? John Nelson.

MR. NELSON: Just a comment, George. I think most of the folks in New England who have gone through groundfish issues do recognize the -- and I know the folks in the Mid-Atlantic certainly have gone through this, too, but I guess it burns so brightly in our minds in the Northeast. I think we want to keep tabs on what's going on because we don't want to get behind the 8-ball because then we do have a lot of ramifications associated with that. And if our plan doesn't do what it's supposed to do, we've already seen how the courts deal with those sorts of things, and they're not pretty. We want to make sure that we've taken whatever incremental steps are appropriate to make sure if we have to stay within the parameters of that plan. So it's just an editorial comment and I think it involves all parties to be involved in it, the LCMTs, the advisory

boards, the states all working together. Whatever the roles are, I mean, that's sometimes dynamic, but I think it's whatever the goal is in getting the input back so that we achieve those goals.

CHAIRMAN LAPOINTE: Right, and I guess I will editorialize back. There are some fundamental differences between the council process and the Sustainable Fisheries Act and this commission and the way we operate. And as Carl said and we've all said before, we do periodic updates of that process. I will rue the day when we try to emulate the council system in terms of being responsive to fisheries. Questions or comments on that issue before we move on? Hearing no other comments, Heather, Item 10, discussion of ideas for inclusion in Addendum IV.

#### **DISCUSSION OF ISSUES FOR INCLUSION IN ADDENDUM IV**

MS. STIRRATT: The commission is in receipt of two LCMT proposals for management program changes. The first comes from Area 2. It includes a total allowable trap program which provides a ceiling for trap allocations to qualified participants; and, two, passive trap reductions on the amount of 10 to 15 percent through a transferable trap certificate program. All provisions of the Area 2 proposal are to be implemented if the next stock assessment indicates the F and egg production benchmarks have not been reached. The second proposal comes from Area 3 where they're interested in amending the trap reduction schedule to add for an additional two years of trap reductions at 2.5 percent per year after the scheduled four-year trap reduction period outlined in Addendum II. It's important for the board members to recognize that these proposals do go beyond the requirements of the revised egg rebuilding schedule. As such, they are more conservative. Board members may want to enter into some type of a discussion about these LCMT proposals, which are not being driven by conservation requirements, and begin to discuss how they should be handled. This discussion should include some type of consideration as to the ASMFC allowance for states to act more conservatively at any time. In other words, the states could go ahead and unilaterally implement these area management programs within their own state waters on a more conservative level. In any regard, the board should provide staff with some direction as to how we need to address Area 2 and Area 3, the new proposals that have been submitted.

CHAIRMAN LAPOINTE: Comments from the board or others? Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. Heather, the Area 2 plan, was that the latest decision by the LCMT's was to hold to the existing trap limits and put this Area 2 ITP plan, basically a historical participation type plan, to move it into a position where it could be used if the next stock assessment says something more needs to be done? Is that my reading of this?

MS. STIRRATT: To answer your question, Bill, this proposal was forwarded by Bruce Estrella and there was an e-mail attached to that. At the beginning of Bruce's e-mail to me, it said, "Heather, please understand that this proposal is to be implemented if necessary following the next stock assessment". Now that is my understanding. I was not at that LCMT meeting. I would assume that the state of Rhode Island and the Commonwealth of Massachusetts probably had personnel at that meeting. If you all have a different interpretation of that, then I would welcome your comments. MR. ADLER: So, in other words, under that, what you just said, they're going to just, for now, keep the just plain 800 pot trap limit that's part of the addendum now; right?

CHAIRMAN LAPOINTE: David Borden.

MR. BORDEN: Thank you, Mr. Chairman. We've got John Sorlien in the audience who is on the Area 2 group and maybe he can clarify it, but what I was told was somewhat similar to what Bill just indicated, that the LCMT had basically agreed to continue to work on the proposal that they submitted during the next year or two until the next stock assessment is going to be completed, and that if in fact they needed to reduce mortality by an additional degree, that in fact they would actively consider a plan such as that. But they were going to keep working on it.

CHAIRMAN LAPOINTE: So it's your understanding that it's not right for board consideration right now?

MR. BORDEN: That was my understanding, but John is free to correct it since he attended the meeting, if we can get him to speak.

CHAIRMAN LAPOINTE: Please, John.

MR. JOHN SORLIEN: I would like to try and shed some light on this without making it more confusing, but I'm not sure how successful I'm going to be with that. For the record, my name is John Sorlien.

I am an Area 2 LCMT member. The development of this proposal by the Area 2 LCMT transpired over many, many, meetings and over a year's worth of time. The last few meetings of the Area 2 LCMT were difficult, to say the least. There was a tremendous amount of discussion at the LCMT level as to what exactly we were going to be bringing forward to the board. What you have in front of you is the proposal which the LCMT did vote on and voted to recommend to the management board for consideration for Addendum IV. It's not entirely clear how you want to deal with this to me, but I guess the simplest way to say this is that the caveat to this whole thing is that the LCMT wanted the board to understand that they were very interested in seeing this plan implemented upon the completion of the next stock assessment, even if it's not a full-blown, peer-reviewed stock assessment, but an interim area-by-area-based stock assessment, and that this plan would then be ready to go. We're concerned about the status of the resource in Area 2 and we're very concerned that any further delays in developing an implementation package for this proposal will jeopardize our ability to meet our rebuilding products. We need to get this thing moving, so there is that caveat that it should be an as-needed type of thing, but not necessarily my recollection of how the LCMT wanted to move forward with the board. It's not necessarily that this would -- this is not a program that is not ready for board consideration, and we are interested, I believe, in seeing this addressed through Addendum IV.

CHAIRMAN LAPOINTE: Thank you, John. When is the next stock assessment supposed to occur, next year?

MS. STIRRATT: It's scheduled for 2003 in December.

CHAIRMAN LAPOINTE: David.

MR. SPENCER: Thank you, Mr. Chairman. If I could just speak very briefly to the Area 3 portion of the proposed addendum. Even though this is not mandated, we did do this for conservation reasons to gain the benefits that additional trap reductions would provide. I think it's important to note that this is our only vehicle to do this. We can't have states implement it, so an addendum like this is our only vehicle. Given the current discussions on the groundfish situation, I think the more restrictive or the more management measures we can get into any area are a benefit. Thank you.

CHAIRMAN LAPOINTE: Board members, questions, comments, desire to move on an addendum? I'm seeing no interest at this point and I'll get public comments in a minute, Bonnie. I did see your hand this time and I will recognize you before 4:00 o'clock, maybe. David.

MR. SPENCER: A question. There was a financial question regarding addendums at the last meeting, and I would like to ask a similar question. If you don't go ahead with Addendum IV, does the money that's set aside for that disappear or is it retained. I would hope that we can move forward with this, but in the event that we don't, I really would be discouraged if it entailed a long delay.

CHAIRMAN LAPOINTE: Bob and Vince, can you answer that question?

MR. BEAL: The money that's budgeted for that project this year, if it's not used for some other lobster purpose, other tech committee meetings or whatever or additional board meetings, then it will kind of roll back into the general commission fund. And as we set the priorities for 2003, the commissioners can reallocate some of the money in 2003 to Addendum IV, if that's the priority they want to give it.

CHAIRMAN LAPOINTE: John Nelson.

MR. NELSON: Thank you, Mr. Chairman. I guess I'm just not clear on what we should do here. I think I heard that it was not driven biologically for these measures to be put in place, but I understand that the teams recognize the need to probably cut back on effort to some degree, and perhaps the course of action should be for us to ask the technical committee to review these proposals and determine if there is a biological benefit that we need to take into consideration at this time.

CHAIRMAN LAPOINTE: Heather asks against what criteria? That comes after the letter Paul and I will draft to the technical committee about performance criteria.

MR. NELSON: I'll wait until Paul is finished with his motion, Mr. Chairman, before I answer that, and then we can probably use that as the sounding board.

CHAIRMAN LAPOINTE: I don't see a lot of interest on the part of board members. We've had discussions on how to balance the obviously good and hard work of the LCMT's with the work that the states

are doing and the overall commission needs, and it strikes me that comments of money notwithstanding, because I don't think that's the biggest issue, we want to have a good reason to put together an addendum and move forward on the part of staff, and I'm not hearing it yet. I had Bill Adler.

MR. ADLER: Thank you, Mr. Chairman. Dave, I would like to address this to you, Dave. What did you say about that this is the only mechanism through the ASMFC to do this offshore federal waters addition to your trap reduction program, which is basically an acceleration of a plan you've already got; is it not?

MR. SPENCER: Yes, it is.

MR. ADLER: Okay, and I understand why you want to do this. Is this the only mechanism you can use is the ASMFC, or is this something that the federal NMFS, which has to put it in anyway, could do it for your plan? Why ASMFC?

CHAIRMAN LAPOINTE: I'll answer that.

MR. ADLER: Okay.

CHAIRMAN LAPOINTE: I mean, whenever we ask for action in federal waters or somebody does, they say, well, how does it fit in with the commission plan because it's supposed to be an integral component, and so we put them in the quandary and them in the quandary of having something that's going outside of the commission plan if we don't take some kind of action, either to stop it or to move it forward.

MR. ADLER: Has the first part of the plan been implemented in federal waters yet? That's before this one comes along. Has the first one been implemented?

CHAIRMAN LAPOINTE: I think you know the answer to that.

MR. ADLER: Thank you.

CHAIRMAN LAPOINTE: Can I take Bonnie? She's been hopping up and down; it's like an aerobics class. Ms. Spinazzola.

MS. BONNIE SPINAZZOLA: Thank you. Bill, that's exactly the reason why we do want to get this started because it's now been four years. And, as you know, the federal portion has not been implemented

yet.

And four years ago or so, three to four years ago, the commission recommended that we get started with Addendum I, which is still going through the process with the feds. So, therefore, if we don't do something soon, or whenever the commission recommends something to the federal government, we have to plan that it will take that number of years to get it through and so therefore -- and what we're doing is really not accelerating our trap reductions, which we actually have already put something in for that because of the lack of time it's taken the feds to move forward. These are additions, and it's strictly for conservation benefits. We're very concerned that we want to try and reduce mortality and increase egg production. So, therefore, we want to go forward with whatever measures we can. Because it takes so long for the feds to do something, we have to do it well in advance and we asked the commission to make that recommendation so that we can forward it on to the feds for them to put it in their plan. Thank you.

CHAIRMAN LAPOINTE: Thank you, Bonnie. I'll take Bill Adler.

MR. ADLER: Bonnie, did I hear you say make that recommendation as opposed to start another addendum here? I think that's what I -- I'm trying to figure whether we need to get into another addendum here. Is a recommendation from us to NMFS sufficient or do you need an addendum?

MS. SPINAZZOLA: You have to go through an addendum to be able to finalize it to make the recommendation to NMFS.

CHAIRMAN LAPOINTE: We need to break. We're still on this issue.

MR. ABBOTT: Just a question. We keep talking about having to quit at 4:00 o'clock. I don't know if anything else is scheduled beyond that, but isn't it in the board's interest to continue?

MR. BEAL: There's an Asian Oyster Workshop that's from 4:00 to 6:00 this evening that was intended for all the commissioners to participate in.

CHAIRMAN LAPOINTE: I don't think we have a -- Barring your interest in asian oysters, which it's a little presumptuous on my part, of course, Mr. Commissioner, I don't think we have a strict deadline, but nor do we want to drag our discussion on until all hours of the night. Richard Allen.

MR. RICHARD ALLEN: Thank you, Mr. Chairman. I would just like to comment as someone who has sat in most of the Area 2 LCMT meetings, and I'm sure everybody realizes the difficulty and the different perceptions that people have in those meetings. But, certainly, I think the basic question that people are grappling with was whether you wait until you find out that your plan has not done what you intended it to do from the results of the stock assessment and then start to develop a plan that will correct that problem or whether you try to develop the plan ahead of time and get it in place to go into effect when you find out that you haven't succeeded with your previous plan. I would just say I can't say when the folks voted exactly what they intended that way, but I would just suggest for you folks, as managers and looking at the situations that we've had in our various fisheries, that certainly my preference as a person in the lobster industry and as someone concerned about the conservation of the resource, would be that the most advisable thing to do would be to have a plan that would be ready to go when you found out your plan hadn't succeeded. So I would hope that you would move forward with Addendum IV so that we don't get into that situation of being years and years behind when we find that we do have a problem. Thank you.

CHAIRMAN LAPOINTE: Thank you, Dick. Paul Diodati, you had your hand up.

MR. DIODATI: I'm prepared to make a motion, Mr. Chairman, to my latter point, if that's appropriate to do that now or do you want to discuss this issue further?

CHAIRMAN LAPOINTE: The latter point on Addendum IV and --

MR. DIODATI: No, this is going back to Addendum III.

CHAIRMAN LAPOINTE: We're not on that agenda topic right now. Other discussion items? Hearing none, board action? I don't see any. It strikes me we have a couple things. One, yes, people want to stay ahead of the curve and not do anything until it's too late. 2003 is a long way from 2008, so there are interim measures with that. Staff informs me that they are more able to work on this issue now as compared to later, but this board has also mentioned the fact that we have a co-management process here with the LCMTs, and that's side-by-side management. Some of the states, I think, feel

uncomfortable with constantly reacting to LCMT plans and not being able to kind of get a firm basis for where our regulatory process is now before moving forward. That's the mix of issues we have before us. I don't see any board interest in moving forward. David.

MR. BORDEN: Thank you, Mr. Chairman. I spoke to John Sorlien out in the hall, and one of the reasons I'm sitting here not making a motion on the Area 2 proposal is that my understanding is similar to Bill Adler's understanding of what they've voted on, which is slightly different than what John's understanding is. Now, just so everyone is clear, I have not attended any of these meetings so my understanding was brought to me by the staff, and I guess my question here is I don't want to circumvent that process. You know, I firmly believe that we should try to follow the input that we get from the LCMTs, but at the same time I have heard from a number of members of that LCMT that they wanted to continue to work on this proposal. So I guess my question to you, Mr. Chairman, or the staff would be what's the advantage of putting a motion on the table now and starting that process versus what do we lose if in fact we just delay it for one meeting and schedule formal action on moving forward with Addendum IV at the next meeting? Do we really lose that much, Heather? And then, in the interim period, what I would certainly do is go back and find out exactly what the vote was and what the intent of Area 2 LCMT is on this issue.

MS. STIRRATT: Okay, let me try to address the second part of your concern first, David, and then I'll get back to the implications of waiting. The e-mail that I received from Bruce Estrella, who is support staff from obviously the Commonwealth of Massachusetts to Area 2, reads as follows: "Chairman Henry Sebulla has asked me to forward you the LCMT 2 plan addendum dated such and such, which the committee voted to send to the lobster board for review. The request was for this effort control plan, or a facsimile, to be implemented if the next stock assessment indicates that F and egg production benchmarks for Area 2 are not reached". It says that the LCMT will welcome some discussions with the jurisdictions in the interim to revise the plan if necessary. That was what was submitted to me and the intent, as I read it, was that this should be considered for Addendum IV at this time to be implemented if necessary. That was my understanding. Now, to the first part of your question, which is what are the implications of us waiting, from my perspective, two or three months to implement an addenda process, probably not that much. It may affect the Area 3 plan because they had wanted to up their trap reduction

schedule an additional two years. I'm not sure if that would change or not. But from a staff perspective of two or three months, probably not a big deal. If you wait any longer than that, it's going to start to cut into staff work with the stock assessment update, which is going to be a significant amount of my time over the next year or so beginning later this fall.

CHAIRMAN LAPOINTE: Gordon Colvin.

MR. COLVIN: There was some discussion of some of the issues associated with the Area 2 concept of transferable trap tags at our last board meeting. A couple of us made observations that it was outside our experience to understand how an individual quota or an individual transferable quota or some other related kind of operation would work within the context of the interstate fishery management program, its charter, and as a compliance requirement. That's a key part of the Area 2 proposal. It involves fishermen from -- It involves the waters of the two states, it involves the waters of the EEZ, it involves fishermen from five states, and there are some very large issues associated, in my mind, anyway, with the mechanics of operating a system like that, of the legal ability of the states and the federal government to institute such a system. Those questions are important ones that might have ramifications and applicability outside the lobster management program, and it seems to me that if there is a strong desire to look ahead and position this management program to be able to implement something like this at some time in the future when the condition of the stock might warrant something like this, that the most important thing to do now is to really focus on those big issues about process, procedure, legal authority, and so forth for the individual states, for the states collectively, and for the National Marine Fisheries Service. Now, how to do that, I'm not quite sure. It's a big job, but it's much more important, I think, than some of the other issues about do you put Addendum IV on the agenda or do we have the staff work on writing Addendum IV. It's all motive. We can't get at these bigger issues, and they're tough.

CHAIRMAN LAPOINTE: Can I work with staff to come up with a list of those kind of issues for the board's consideration? Heather is corralling me.

MS. STIRRATT: I would just offer that you may recall that in August of this year, the advisory panel is planning on holding a workshop dealing with transferability specifically. The intent of that workshop would be to bring in a number of speakers. We have two board members, Ernie Beckwith and Mark Gibson,

who have been providing us with some input about getting at some of these issues, Gordon, that you raised; trying to provide commissioners with more information about the transferable tag program and the process and the legality of it and trying to get at a lot of those questions and provide you the information. I think out of the workshop things should be more transparent. But, again, that's not scheduled until August of this year.

CHAIRMAN LAPOINTE: Gordon to follow up and then Bill.

MR. COLVIN: Well, that would be very helpful, I think, as an initial step. As I said before, I think it's immensely important to focus on the process; how would the process work both in terms of administering such a program across jurisdictional boundaries, of adopting and implementing regulations by the various parties that would have to adopt regulations that make it work, and also, frankly, the commission's implementation and compliance process. I mean, I've been thinking about this and I'm having a hard time tracking it through in my head how it would all come together.

CHAIRMAN LAPOINTE: Bill Adler.

MR. ADLER: I understand exactly what Gordon is saying here and I think that's probably very good to move and try to get the answers to these things. My only concern here has to do with the Area 3 proposal which is basically a continuation of something which is already in the pipeline, and I was just wondering since Heather said that she's got time, that would it be worth throwing together a draft of an Addendum IV, but just for the Area 3 one. Remember, I'm just trying to see if it's something that we're going to fly so we can basically get the feds going on it is what I understood this to be. Could that -- just some draft of what that Area 3 plan would look like in an addendum so we could just look at it at the next meeting. And I'm only dealing with the Area 3 here because I understand this is a jump start to a federal thing that's already in the pipeline. Is that possible?

CHAIRMAN LAPOINTE: Heather.

MS. STIRRATT: I will proceed as the board desires. So if you all would like for staff to develop a draft to cover one or both issues, I would be happy to do so for discussion in the August meeting week.

CHAIRMAN LAPOINTE: That's the right

answer.

MR. ADLER: All right, I'll make a motion that you do a draft for Area 3, a draft of what an addendum would like, Addendum IV, for Area 3 only at this point, just so we can look at it.

CHAIRMAN LAPOINTE: Before we get a second, we know what an addendum looks like, Bill.

MR. ADLER: Well, draw it up, in other words.

CHAIRMAN LAPOINTE: Do we want to do the addendum or don't we, that's the question, and it strikes me that with all the other comments we have had, Gordon's included, that we have questions associated with the Area 2 plan, we could wait until after that August workshop and then see what came out of it and discuss Area 2 and Area 3 together.

MR. ADLER: Okay, all right.

CHAIRMAN LAPOINTE: David Spencer.

MR. SPENCER: Thank you, Mr. Chairman. I certainly appreciate Bill's thoughts, but as chairman of the Area 3 LCMT, I really don't want to just go ahead on our one issue. I do, but not alone and I'm willing to wait, but I hope the wait isn't too long. Thank you.

CHAIRMAN LAPOINTE: I understand. Other board comments? I am going to take Bonnie and John and then do something.

MS. SPINAZZOLA: I agree with David. I don't think it's really fair for the board to move forward for one area, and it is a down the road type of a thing. However, I wonder if it's possible, should the board decide that for whatever reason they don't want to move forward with Addendum IV right away, which we are hoping that it can be as soon as possible because of timing, that there might be a way to make sure that there is money held aside or put aside at a later date to make sure that these issues can be addressed.

CHAIRMAN LAPOINTE: That's a fair question. John.

MR. SORLIEN: Thank you, Mr. Chairman, a couple of comments. One is that I'm not real confident -- I don't have a lot of confidence that all of the commissioners sitting at this table are fully up to speed with what the current status and condition of the Area 2

resource and fishery is. That's the first concern. I think if Mark Gibson was sitting here right now, he would be a perfect person to address that issue. He's not, unfortunately. I think the board is going to be learning these things about these different areas and the status of these resources as stock assessments and updates come forward. But I think it's important that the board is cognizant of the fact that the Area 2 Lobster Fishery and its associated resource are not doing very well. The second point goes to Gordon's comments about feeling uncomfortable about a lot of these larger issues, and one of the things that strikes me as being -- the only word that I can really think of and not directed at Gordon, but about this whole discussion is the word "disingenuous." The LCMTs look to this management board to send a consistent signal so that as they're going through their work, and believe me this is work, that their deliberations are not in vain. It seems to me that this board sent a signal to the Area 2 LCMT when they did in fact pass on and a management plan passed muster that was very similar in scope and in composition to what the Area 2 LCMT has proposed and that would be the Outer Cape lobster management trap reduction and transferability proposal. So we already have touched on some issues. To my mind, what the Area 2 LCMT has put forward to this management board and what some of the other areas, including the Outer Cape and Area 3 is approaching this rapidly, we have put before this board a comprehensive lobster management proposal. It encompasses gauge increases, which we already have on the table. It encompasses effort controls and effort reductions, which we feel the Area 2 LCMT is not -- there's no discord on this issue. It's really a question of how to approach this with the management board, that effort reductions and controls are necessary. We have none. There are none in place. We have an 800 trap limit that does absolutely nothing to control effort in Area 2. So in order to keep our other measures, gauge increases and so on, from being undermined, we addressed head on the whole issue of effort control. We have that in front of you now. I would be remiss if I walked away from this microphone without saying that the DMF director from Massachusetts I think is probably one of the few commissioners that I've heard today that to my mind has both oars in the water on this. We need to stringently address conservation of the lobster resource across boundaries and jurisdictions. Failure to do so, I think all we have to do is look to the debacle that we have just witnessed with groundfish. And if we want our courts to manage our fisheries, then we just need to keep right on doing what we're doing, which is dragging our heels, missing our rebuilding periods, extending rebuilding periods, and invite the

environmental groups. You may just as well invite them into this table and say what should we do because I personally, as a trap fisherman who depends on this fishery in Area 2 to feed four beautiful girls, three daughters and one wife, I cannot in good conscious walk away without saying I cannot believe that this board can meeting after meeting, year after year, drag its feet the way that I have seen them do it. It's unconscionable to me. The Area 2 LCMT has made a recommendation. I don't know whether Heather has the minutes in front of her from the last LCMT meeting, but I think she has adequately described what the Area 2 LCMT has asked this board to do. We have put a management proposal in front of this board. If you don't like it, that's fine, but some feedback other than, well, we're uncomfortable about these larger -- these are not large ideas that are foreign to us. These are very, very, very simple, uncomplicated ideas, and I can't see any reason not to just take some action, move forward, put this thing out to public hearing. We're going to have a workshop for transferability in the fall and we just keep moving forward on these issues.

CHAIRMAN LAPOINTE: I will answer in part, and then I'm going to close discussion on this item unless I hear other discussion. We started this discussion with Paul Diodati talking about the difficulties in implementing an increasingly complex plan. That's part of the management process and the LCMTs have done great work. The staffs of these states have done great work and these commissioners aren't sitting on their asses doing nothing because they're trying to stall. These are all valuable and necessary components. We can't, in good conscience, anymore than you can not comment, just do nothing and just say, oh, we're going to put in what the LCMT wants just because we can. Gordon raises questions. What if there are legal issues that come up? What if there are just issues that confront the states because we do a lot of the implementing or the federal government about the complexities in the plan and our ability to move forward with it? I think those are the questions being asked and it strikes me those are fair questions because, yes, we have biological targets and we're trying to address those. But we also have socioeconomic and sociocultural issues and legal issues, and that's something we should all remember, *visa vis* lawsuits, that we have to pay attention to. I think those are the questions that are being asked. I think board members have expressed concerns in the past about the difficulty in just saying, well, the LCMT said we want it so we're going to do it. Co-management doesn't mean, as you've heard before, bottoms-up management. It means side-by-side management. We use industry

members to promote plans that you guys think are going to work. But there's a component that we have to pay attention to as well, and I think the reluctance on the part of the board is because of that other side of that co-management, that side-by-side management that I mentioned. Gordon Colvin suggested waiting until after the August workshop on transferability because he did raise significant concerns. Mark Gibson and Ernie are on that subcommittee. I haven't for a while looked at the charge and the topics being discussed. I would think in light of those questions being raised, that board members would want to look at the agenda and the topics being discussed and to make sure the breadth is wide enough to address questions of legality, questions of process, et cetera. Does that make sense? David Borden.

MR. BORDEN: In the sense of timing, Mr. Chairman, is the workshop scheduled before the next commission meeting?

CHAIRMAN LAPOINTE: Heather.

MS. STIRRATT: The workshop is anticipated to be held on August 26th or 27th. That would be during the August meeting week, and I'm sure that between myself, Vince, and Bob we could schedule that workshop to occur before the next lobster board meeting that week.

MR. BORDEN: That's just what I was going to suggest, that you do that and that way you don't lose another three months.

CHAIRMAN LAPOINTE: I have a note -- to get back to the calendar, I don't have as much freedom as we thought we did and this is a note: George, the Asian Oyster Workshop is oriented towards all commissioners because it is a shellfish transport plan issue, not just the Chesapeake. You have until 4:30 and then we'll pull the plug, and then Susan has some niceties that I don't need to share with you guys, but we've got until 4:30. There are a couple issues I think that means two ten-minute increments pretty much. We have a number of agenda items I want to discuss. There's a discussion of LCMT concerns. I think that's a short report, and then I want to get back to Paul. I'm not going to ignore you, Paul has a motion in regard to performance criteria.

#### **LCMT DISCUSSION**

MS. STIRRATT: Mr. Chairman, I will defer on discussion of the LCMTs concerns and the report of



that subcommittee until the August board meeting when we have more substantive recommendations for the board to consider.

CHAIRMAN LAPOINTE: There's one item that David Spencer, as chair of the AP, has served on that subcommittee and Bob Baines is the incoming chair. With the board's indulgence, I'm going to have both of those folks sit on that, David for his experience and Bob so he can get up to speed on that. Does that make sense? Thank you. Paul Diodati.

MR. DIODATI: I would like to make a motion, Mr. Chairman, and it's on the board and I'll read it: I move that the board charge the technical committee to develop suggestions for real-time biological monitoring programs that judge the effectiveness of all management strategies in the lobster plan. For instance, such programs should evaluate the reduction in fishing mortality on female lobsters from the mandatory V-notch requirement of Area 1 or through evaluation of increased biological benefits from minimum size increases and effort controls in other areas.

MR. CARVALHO: Second.

CHAIRMAN LAPOINTE: That was seconded by Jerry Carvalho, et al. Discussion on the motion? Pat White.

MR. WHITE: What did we do before if we didn't do this? I'm not sure what we're asking for. Carl, we haven't had this discussion?

MR. WILSON: It's certainly come up as far as how quick can you evaluate management measures that are in place, and the bottom line is I believe our stock assessment schedule and just the availability of the data is not there yet, where on an annual basis we can just go in and do a thorough examination of all the management measures that are in place. Like I stated before, there is certain assumptions with each egg production model run, which is our benchmark for our biological reference points. Those assumptions can take years and years to actually be realized in the fishery. There are measures that may be able to be evaluated on a yearly basis. Others, most likely, are not going to be. It's something I think we can try to approach and come back to the board with our best reaction, but I have a feeling it's going to be a combination of yes and no's. Some of those yes and no's have been presented to the board in the past.

CHAIRMAN LAPOINTE: Pat White follows.

MR. WHITE: What Paul is suggesting here in this motion, though, is asking for increased monitoring programs, and wouldn't we then have to arrange for funding for that, or can we do this under the parameters that we're currently operating under?

MR. WILSON: I think the TC could come back and let you have an idea if this is even possible. I mean, essentially our meeting on April 19th was trying to address some of these issues with V-notching, but they certainly pertain to the other management measures that Paul mentions here.

CHAIRMAN LAPOINTE: Other board comments? Gerry.

MR. CARVALHO: I have to agree with Paul in that if we're going to implement these specific management controls, and we don't have a clearer idea of their effectiveness, I think we're moving ahead blindly and foolishly. It just doesn't make a lot of sense. I'm not suggesting that we need guaranteed, mandatory, year-by-year assessments, but we need some kind of accountability, especially in Paul's case where he has so many conflicting regulations appearing for Massachusetts waters. It makes sense to do that. That's why we have accounting in business, across the board. In this case, it's biological accounting, is the plan doing something, is it worth something, what's it costing us, what are we accomplishing? The idea of waiting 8 years or 20 years to come up with an idea, well, I guess the plan didn't work, I think it's not acceptable. I have to agree with Paul.

CHAIRMAN LAPOINTE: I would make a comment that the accounting system for monitoring this is called assessment; and if any business runs like our assessments are, we're in deep water. Nobody is saying that we should wait 20 years. Carl's point, I believe was, that under the assumptions of those models, things we have to pay attention to and under equilibrium conditions, sometimes the results can take two and three decades, and we shouldn't be blind to that fact as we develop these things.

MR. CARVALHO: I can accept that, Mr. Chairman. I don't think -- and it's an opinion -- I don't think we're at equilibrium. In some cases, and as John Sorlien has brought up, we're not at equilibrium. We're going down, and we need to identify that this is taking place and the measures that we're taking aren't sufficient

or are sufficient.

CHAIRMAN LAPOINTE: Other board members? Dick Allen, please.

MR. ALLEN: I would offer a suggestion that part of the problem, in my view, has been the focus on egg production as the sole measure of the success of the plan, and there are in fact eleven objectives to the management plan. It almost seems to me that while it may sound more complicated to look at all eleven objectives and to use those to measure the success of the plan, it may actually simplify and make the board's job easier if you had some criteria that you could look at that might relate to multiple objectives, and that in fact some of the things that go into the stock assessment that kind of get lost in the stock assessment may be more useful in giving you management guidance before they got lost in the stock assessment. And you could actually come up with some of those inputs and look at them and get some common sense guidance as to whether you're moving in the direction that you want to go as opposed to trying to figure out some long-run equilibrium egg production down to some decimal point. So I just throw that out as a suggestion, that you may want to, in your guidance to the technical committee, ask them not necessarily to limit themselves to just the egg production goals that have been established, and that they might want to broaden the kind of outlook at which they come at these performance or evaluation criteria. Thanks.

CHAIRMAN LAPOINTE: Thanks, Dick. Other board comments? Dennis Abbott.

MR. ABBOTT: Could we call the question in the interest of time?

CHAIRMAN LAPOINTE: Is there objection to calling the question? Now, are there members of the public who I have ignored? We're going to call the question. States, please caucus and we'll vote in a minute.

(Whereupon, a caucus was held.)

CHAIRMAN LAPOINTE: Are we ready? Board members, those members in favor of this motion, please raise their hand; opposition; abstentions. The motion passes unanimously. We have a couple other agenda items. We have an AP nomination. I'm going to try to blow through a couple issues. Tina, are you the one who deals with the AP nominations, or Heather is.

MS. STIRRATT: Just very briefly. The state of Connecticut has submitted a nomination for Nick Crismale to be added to the advisory panel and that information has been supplied to you. The action before this body today is to approve Nick to serve on that panel.

CHAIRMAN LAPOINTE: There's a motion by Bill Adler and a second by David Etnier. Do we need time to caucus? Is there objection to the nomination of Mr. Crismale to the AP board? Seeing no objection, it's done. NMFS update, Harry, you were on the agenda for NMFS status update, and I was told that was a short agenda item.

MR. MEARS: Yes, I can be very brief. Our public comment period for our most recent proposed rule ended on March 1. We moved forward with a final rule and a final EIS regarding historical in Areas 3, 4, and 5, and we will continue working on publishing a draft environmental impact statement on the provisions of Addenda II and III.

CHAIRMAN LAPOINTE: Thank you, Harry. Questions? Gordon.

MR. COLVIN: Not a question for today. I just want to ask everyone if they would at some point review the letter that I sent to Bob on this issue that bears on the more restrictive and how that's presently being administered and give some thought to the issue that it poses. I'm going to ask Harry and Bob if at the next board meeting they can address how all that is going to play out. It's a situation that concerns us a great deal and I think it ought to concern everyone.

CHAIRMAN LAPOINTE: We will do that, Gordon. I have a couple of announcements. We have three other business items that we didn't get to: Addendum III gauge sizes/marketing discussion, election of a vice chair and you know who you might be, and the most restrictive clarification. Is there objection to adjourning? Seeing none, we are adjourned.

(Whereupon, the meeting adjourned at 4:25 o'clock p.m., May 20, 2002.)