

**PROCEEDINGS OF THE
ATLANTIC STATES MARINE FISHERIES COMMISSION
ISFMP POLICY BOARD**

**The Ocean Place Resort
Long Branch, New Jersey
Hybrid Meeting**

November 7, 2022

Approved February 2, 2023

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1. **Approval of agenda** by Consent (Page 1).
2. **Approval of Proceedings of August 21, 2022 Hybrid Meeting** by Consent (Page 1).
3. **Move to approve De Minimis Policy as presented today** (Page 6). Motion by Doug Grout; second by Doug Haymans. Motion carried with one objection (Page 6).
4. **Move to adjourn** by Consent (Page 14).

ATTENDANCE

Board Members

Megan Ware, ME, proxy for P. Keliher (AA)	Loren Lustig, PA (GA)
Cheri Patterson, NH (AA)	John Clark, DE (AA)
Doug Grout, NH (GA)	Craig Pugh, DE, proxy for Rep. Carson (LA)
Dan McKiernan, MA (AA)	Lynn Fegley, MD (AA) (Acting)
Raymond Kane, MA (GA)	Pat Geer, VA, proxy for J. Green (AA)
Sarah Ferrara, MA, proxy for Rep. Peake (LA)	Chris Batsavage, NC, proxy for K. Rawls (AA)
Jason McNamee, RI (AA)	Jerry Mannen, NC (GA)
Eric Reid, RI, proxy for Sen. Sosnowski (LA)	Chris McDonough, SC, proxy for Sen. Cromer (LA)
Justin Davis, CT (AA)	Doug Haymans, GA (AA)
Bill Hyatt, CT (GA)	Spud Woodward, GA (GA)
Jim Gilmore, NY (AA)	Erika Burgess, FL, proxy for J. McCawley (AA)
Joe Cimino, NJ (AA)	Gary Jennings, FL (GA)
Tom Fote, NJ (GA)	Marty Gary, PRFC
Adam Nowalsky, NJ, proxy for Sen. Gopal (LA)	Mike Ruccio, NOAA
Kris Kuhn, PA, proxy for T. Schaeffer (AA)	Rick Jacobson, US FWS

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

Staff

Robert Beal	Tracey Bauer	Jeff Kipp
Toni Kerns	Katie Drew	Adam Lee
Tina Berger	Emilie Franke	Mike Rinaldi
Madeline Musante	Lisa Havel	Julie Simpson
Kristen Anstead	Chris Jacobs	

Guests

Jason Avila	Adam Kenyon, VMRC	Somers Smott, VMRC
Alan Bianchi, NC DENR	John Kravchak	Bryan Sparrow, Fuji Film
Colleen Bouffard	Mike Luisi, MD DNR	Rene St. Armand, CT DEEP
Nicole Caudell, MD DNR	Tina Moore, NC DENR	Alex Su
Karson Cisneros, MAFMC	Brandon Muffley, MAFMC	Beth Versak, MD DNR
Heather Corbett, NJ DEP	Brian Neilan, NJ DEP	Eric Wallace
Jessica Daher, NJ DEP	Derek Orner, NOAA	Kate Wilke, TNC
Jeffrey Dobbs, NC DENR	Nicholas Popoff, US FWS	Angel Willey, MD DNR
Cynthia Ferrio, NOAA	Will Poston, SGA	Chris Wright, NOAA
Anthony Friedrich, SGA	Jill Ramsey, VMRC	Faith Zerbe, DE Riverkeepers
Alexa Galvan, VMRC	Jeff Renchen, FL FWC	Erik Zlokovitz, MD DNR
Lewis Gillingham, VMRC	Chris Scott, NYS DEC	
Jesse Hornstein, NYS DEC	McLean Seward, NC DENR	

The ISFMP Policy Board of the Atlantic States Marine Fisheries Commission convened in The Monmouth I Room in The Ocean Place Resort, via hybrid meeting, in-person and webinar; Thursday, November 10, 2022, and was called to order at 12:00 p.m. by Vice-Chair Joe Cimino.

CALL TO ORDER

VICE-CHAIR JOE CIMINO: I'm going to call the Policy Board to order. Once again, this is Joe Cimino, New Jersey DEP, and Vice-Chair of the Commission. I'm somewhat pinch hitting for Chairman Woodward, who I am glad to report made it home safely, and is participating virtually. I think this is a little bit easier for me to call on hands, since the vast majority of us are here, albeit assisted by Bob and Toni and others.

APPROVAL OF AGENDA

VICE-CHAIR CIMINO: We'll just start with Approval of the Agenda. I'll look for if there is any objection to that. Do you want to do that now?

EXECUTIVE DIRECTOR ROBERT E. BEAL: Yes, thank you, Mr. Chair. Just one additional agenda item for the Policy Board that came out of the Executive Committee. The Executive Committee recommended a letter of support for the RISEE Act. If we could add that under Other Business, I can explain the background on that at the time.

VICE-CHAIR CIMINO: Great, thank you, and a little more information will come out of the Executive Committee Report in a little bit. We'll add that to the agenda, and with no objections I'll consider that approved with unanimous consent.

APPROVAL OF PROCEEDINGS

VICE-CHAIR CIMINO: Then, approval of the proceedings from the August, 2022 meeting. Again, if no objections we'll consider that approved by consent.

PUBLIC COMMENT

VICE-CHAIR JOE CIMINO We'll open it up now to any public comment. Okay, seeing none, I would like to turn it over now to Chairman Woodward, who had some comments. I mentioned that at the Executive Committee, and so I would like to turn it over to Spud.

CHAIRMAN'S REMARKS

CHAIR SPUD WOODWARD: Thanks, Joe, can you hear me?

VICE-CHAIR CIMINO: Loud and clear.

CHAIR WOODWARD: All right, very good. Thank you, Joe, and thank you for stepping in to pinch hit for me. Sorry I had to leave the meeting, but it's probably the right decision, given the weather conditions that are here right now. It probably would have been very difficult to get home as planned, so I appreciate it.

It is customary for the Chair to make a few remarks during the annual meeting, so if you will indulge me with a few minutes, I would like to fulfill that responsibility. First of all, I want to thank all of you for your confidence in me and Joe, by reelecting us as your Chair and Vice-Chair for another year. We are certainly proud that the Commission's shared accomplishments this past year, and look forward to working with you to address the many opportunities for success before us.

I cannot overstate how wonderful it has been to finally be together for our annual meeting, after two years of having to rely on virtual participation. While we continued to accomplish our business in that virtual format, the results of this week's meeting clearly show that being together in person creates a much better environment for making mutually agreeable, or perhaps I should say mutually disagreeable decisions about complex fishery management options.

Over the past year we have made significant progress on revising two of the Commission's foundational policies, our Appeals Process and our

De Minimis Policy. Both are fundamentally important to ensuring that we treat each other fairly and without undue burden in the Interstate Management Process. I hope by the end of next year we will be able to finalize changes to another foundational policy, Conservation Equivalency.

Through the efforts of many, including Congress, NOAA Fisheries, the Commission's Finance Department, and Cares Act Administrators in each state's marine fisheries agencies, we have distributed over \$200 million to thousands of people in the aquaculture, for-hire and commercial fishing industry, who suffered loss of opportunity and income during the pandemic.

I was so pleased that we were able to acknowledge these folks at our Monday evening reception, for all the hard work they have done in support of our stakeholders. In 2022, we also made major strides in updating and improving a management supporting science of several species. These include approval and implementation of Amendment VII to the Striped Bass Plan, and completion of the 2022 Stock Assessment Update, which finds that our management measures are beginning to take effect, with the stock no longer experiencing overfishing.

At this meeting, we approved new addenda for Atlantic menhaden and Horseshoe crab. Although both address difficult issues, and are not without controversy, we made decisions that provide states and their stakeholders access to these shared resources, while ensuring the species health and long-term sustainability.

Lastly, as we discussed earlier this week at American Lobster Board. The Commission will continue work as a member of the North Atlantic Large Whale Take Reduction Team with NOAA Fisheries, to address the many challenges associated with the intersection of east coast fisheries, and Atlantic large whales. Our

working relationships with the three east coast regional fishery management councils have never been stronger.

All three Councils and NOAA Fisheries have been working together with the Commission, on the East Coast Climate Change Planning Initiative, which explores how fishery managers can address changing fish stock availability, and distribution, while also developing strategy to strengthen fisheries management, while also supporting the fishing community. This is an extremely important endeavor, and one that I hope will lay the groundwork for how we can proactively respond to changes in the ocean environment, the shifts in species distribution and productivity over time. Working collaboratively with the Mid-Atlantic Council, we have adopted new amendments for both summer flounder and bluefish, including a rebuilding program for bluefish, and approved changes to the management of recreational fisheries for bluefish, summer flounder, scup, and black sea bass through adoption of the Harvest Control Rule.

Discussion on recreational fisheries management reform will continue to be a focus for both management bodies. We are also closely following the South Atlantic Council, as it works to finalize SEDAR Spanish Mackerel Assessment, and to determine whether next steps for management are needed and possible.

Thank you again for your vote of confidence in Joe and me. We certainly look forward to working with you in the year ahead. Let's build upon our past accomplishments, and ongoing efforts to make 2023 even more productive and successful than 2022. I certainly want to thank the help of the staff for preparing these remarks, and any past chairman will tell you that their help is necessary to making us appear smarter and certainly more eloquent than we probably really are. But thanks again, Joe.

VICE-CHAIR CIMINO: Thank you, Mr. Chair, and I will simply say here, here.

EXECUTIVE COMMITTEE REPORT

VICE-CHAIR CIMINO: For our next agenda item, well Bob has very politely offered to read out the Executive Committee Report. Thanks, Bob.

EXECUTIVE DIRECTOR BEAL: As most folks here know, the Executive Committee met yesterday morning at 8:00 a.m. 8 to 10, and went over a number of different agenda items. The first one they took action on was to review the FY22 Audit. The audit was clean, no problems were identified by the auditors, and the Commission is still in strong financial shape.

The Executive Committee approved the audit, and that is good news to hear. As always, Laura and her shop keep the financial parts of the Commission running smoothly. The next agenda item was the Cares Act Update. The Executive Committee reviewed the spending of Cares 1 and Cares 2, and there is a little bit of money left over in Cares 1, and the Commission may have that money reallocated to overhead for ASMFC, because we spent a lot more than we charged for.

Then for Cares 2, there is about 5 million dollars that will likely go unspent by individual states, because they no longer have a need, and they've accommodated all the industry folks that were impacted by COVID. We're going to consider reallocating those 5 million dollars to seven states that indicated they had remaining needs, and we're going to bring some different reallocation scenarios forward to the Executive Committee in one of their interim phone calls between this meeting and the February meeting.

The next agenda item was the De Minimis Policy. You'll hear more about this later as Toni presents it. But ultimately, the outcome of the review of this was to recommend that the Policy Board approve the draft De Minimis Policy, and as I said, we'll hear more about that in a minute. The Executive Committee reviewed a spending strategy for 14 million

dollars, as allocated by Congress to deal with right whales and lobster fishery interactions with right whales. The money is to be spent on gear modifications, gear marking, vessel trackers, and vessel tracker subscriptions, as well as just general research to move forward in reducing interactions between lobster gear and right whales. The group agreed to essentially an allocation strategy that will allocate the money based on the number of federal permits that each state has. It's a proportion that will go out to each of the states.

The northern four states, Maine, New Hampshire, Massachusetts and Rhode Island are going to develop individual spend plans to submit to Congress, and the states from Connecticut through Virginia, actually Connecticut through Maryland, will develop one comprehensive spend plan. The majority of that money will come to ASMFC, and ASMFC will actually administer the money out for those states, because they have relatively small number of permit holders.

That plan will move forward. We also received an update on the conservation equivalency process or review of the conservation equivalency process. That process is moving along. There was a workgroup that reviewed a series of questions that were identified by the Policy Board, and the Executive Committee agreed that they wanted to forward those responses to those questions to the full Management and Science Committee for comment and review.

That document will bounce back to the Management and Science Committee for a little bit more work. We received an update on future annual meetings. Next year we're in North Carolina, most likely Beaufort, North Carolina. The following year we're in Maryland, and I forget where we go after that. But that is far enough in advance, so North Carolina and then Maryland the next two years.

Under Other Business, two agenda items came up. One is the RISEE Act letter that I mentioned earlier. I was contacted by a Congressional Office that was seeking the Commission's support for the RISEE Act

as it is currently written right now. RISEE is the reinvestment in shoreline economies and ecosystems.

It is essentially taking revenue generated from wind power generations, wind power leases, and moving that fund in a ratio back to U.S. Treasury, the states and into ocean projects at the state level. I'll talk about that more later, when we go into this. There is a draft letter that I e-mailed around last night to everybody.

That is what we'll be asking for approval of later in this meeting. Then the final agenda item that was brought up, there was some conversation about financial support for LGA participation in ASMFC meetings outside of our normal meeting weeks. The staff is going to go back and look into that, see what the financial affects would be.

Try to define some sideboards on what sort of an extraordinary meeting that would potentially warrant some sort of stipend or payment that is kind of above and beyond the call of duty of regular volunteer work that two-thirds of the Commissioner's do as either a Legislative Commissioner or Governor's Appointee. Those are the quick updates from the Executive Committee. I'm happy to answer any questions if there are any from the Policy Board.

VICE-CHAIR CIMINO: Yes, I would be happy to help on that as well, Bob. I really appreciate that. That was quite a bit. We don't just gather for breakfast. Any questions? Go ahead, Ray.

MR. RAYMOND W. KANE: Bob, was RAWA mentioned at all during the Executive Committee meeting?

EXECUTIVE DIRECTOR BEAL: I mentioned it briefly during the conversation about the RISEE Act, just kind of a similar idea of getting money off to the states. You know the hope is that, and Bill Hyatt, the Chair of the Legislative Committee can chime in. But the hope with the RAWA is that they will be able to get that Act

approved during this lame duck session after the election. There is some momentum toward that.

There is some new information coming about, about scoring and pay forwards and all these other things. We hope to be able to share that sooner, rather than later with everybody. But if you are in contact with any of your Congressional officers, it's worthwhile just mentioning, if they can move that forward that would be really helpful. That is the hope, because if it's not approved before the end of the year, we essentially have to start over. The 118th Congress will have to reintroduce it.

VICE-CHAIR CIMINO: Go ahead, Bill.

MR. WILLIAM HYATT: Yes, just as Bob said, the Recovering America's Wildlife Act is kind of stuck on the one-yard line right now. As Bob mentioned, hopefully next week we'll have information back on scoring, and on the pay for. At that point in time, I hope to be able, I've been given by the Association of Fish and Wildlife Agencies a list of offices that would benefit from some contacts.

Hopefully at some point next week, we'll be reaching out to folks to try to encourage and help with making some of those contacts happen. As Bob said, it's on a very short timeframe that it needs to get done, and it needs to be included in an end-of-year spending package, just the strategy at this point in time.

REVIEW OF THE DRAFT DE MINIMIS POLICY

VICE-CHAIR CIMINO: Thanks for that. Any other questions? All right, we'll move on to the Policy Board's Review of the Draft De Minimis Policy. Toni.

MS. TONI KERNS: As Bob said, the Draft De Minimis Policy was reviewed by the Executive Committee and recommended for approval to the Policy Board for your review and consideration. It was on your supplemental materials, if you're looking for the Policy itself. The Draft Policy starts off with the definition of de minimis, and the guidance that is

within the ISFMP Charter on the requirements of de minimis being considered in each of our FMPs.

The De Minimis Policy would outline a set of standards for all species FMPs. It does state that species boards could deviate from the standards to address the unique characteristics of that fishery, but they just need to provide a rationale when they're deviating from the standards. We also recognize that federal FMPs do not have de minimis within their FMPs.

Any measure implemented in a Commission plan or jointly managed species, could result in an inconsistent measure between state and federal waters. The Policy would not automatically change provisions of a species FMP. An addenda or amendment would need to be completed, in order to make a change in a document. That could be either in an addendum that you have coming up, or if it's an issue that is important to that Board, to make a change to the amendments we could do a document-specific to de minimis. The minimum standards that are outlined in the document is that each FMP would establish a set of minimum standards for de minimis.

The standards are there to provide a minimum level of conservation for that species, and prevent regulatory loopholes for the states that are following the measures that are outlined in the FMP that may change from year to year, etcetera, what happens when assessments come out and we have new measures.

These measures would be, the minimum measures would be for the commercial and recreational fishery. They can either be the same for each species, or different. It requires that the standards be reviewed after each benchmark stock assessment, to make sure that they are still providing a minimum level of conservation.

For the fishery designations, the Draft Policy outlines that the provision is considered

separately for commercial and recreational fisheries, or the FMP can combine them. But it is stating that you have to have a de minimis designation if a fishery exists. If there is no significant fishery, then the Plan can state that, and you wouldn't have to have a designation.

I don't mean if it's within a state, it's like the whole coast doesn't have a significant fishery, such as menhaden doesn't have a significant recreational fishery, so you wouldn't need de minimis for recreational menhaden. Under the thresholds, the de minimis would be considered off of the average landings from the previous three years.

A state would be considered de minimis if the average landings of the last three years is less than 1 percent of the coastwide landings. Then lastly, for sampling requirements, the de minimis states can be exempt from sampling requirements, but recommending that the TC and the Stock Assessment Committee review that and take that into consideration, and make recommendations to the Board.

We recognize that biological samples for some stock assessments can be very important for the outer edge states, and so we may need some different level of sampling for those de minimis states, perhaps. That would come from those Committees. That is all I have, Mr. Chair.

VICE-CHAIR CIMINO: Yes, this has been kicking around a little while now. I appreciate all the hard work that went into it, and I think we now have a balance between a standardized policy, but allowing flexibility for the uniqueness of so many of the fisheries that we manage. I'll start with any questions for Toni, and then we'll be looking for the will of the Board to move this forward. Any questions? Chris McDonough, go ahead, please.

MR. CHRIS McDONOUGH: Thanks, Toni, I apologize if you covered this and I missed this part. If a Technical Committee or the species board decide they want to make a change in how their current de minimis status is set, is that going to require an addendum process, since it's modifying the FMP?

MS. KERNS: Thanks, Chris, for that question. Yes. The Policy outlines that management changes do not happen automatically. You would need to go through an addendum or an amendment process to make a change.

VICE-CHAIR CIMINO: Chris, are you okay with that.

MR. McDONOUGH: Yes. Sorry about that, my microphone button shrunk down to a little thing I could barely see. Yes, that is fine. It answered my question.

VICE-CHAIR CIMINO: No, it's appreciated, because it's an important point that we're dealing with. As Toni mentioned, getting this Policy to be reflected in the FMPs is going to be something that is going to happen over the course of time. If we ever find ourselves in a situation where just this is important enough, moving forward de minimis into an FMP.

Then that is a discussion that is going to happen to start an addendum just specifically for that. Otherwise, we hope that as we so often do start opening these up, that we can also start incorporating these policies. Any other questions? If not, I would look for a motion. Go ahead, Doug.

MR. DOUGLAS GROUT: No questions, I just would like to be the person that makes the motion, because Charlie Lessor and I worked on this in the '90s on the Management and Science Committee, the initial concept, you know as little tiny states here and everything. I would appreciate the opportunity when it's ready.

VICE-CHAIR CIMINO: Well, and I saw another fellow de minimis state. Doug, I think we're there, so why don't you go ahead, please.

MR. GROUT: Would you like to make it jointly? I would like to move to approve the De Minimis Policy as presented today.

VICE-CHAIR CIMINO: Well, I think it's only fair to allow the other Doug, who started this round of the De Minimis Policy, so second by Doug Haymans, thank you both. Is there any discussion on this? Go ahead, Doug, and then Mike.

MR. HAYMANS: I'll just echo your gratitude to Toni for putting this together, and to the Commission for their consideration. As Doug and others have said, you know it seems like a small issue, but that is the very definition of de minimis, and I appreciate this moving forward. Hopefully, when we get to bluefish, you guys will help me get that inserted into the bluefish plan, so that I don't have to make a change every six months. Thank you.

VICE-CHAIR CIMINO: Mike, go ahead, please.

MR. MIKE RUCCIO: I just wanted to say, I'll be abstaining on this, and it's for the reason that it does potentially pose incompatibility between jointly managed species, where there is a federal FMP. I will also state that I am jealous of the ability to have this type of provision. It is something that I pay attention to. If there is an opportunity for us to try to develop this into some type of federal framework (say that fast five times), I would really appreciate the ability to do so. But we'll be abstaining on this vote, simply for the reason of the disconnects. I appreciate the kind of threading the needle there, that there is acknowledgement, but it doesn't preclude the ability of the Policy to go forward. If we have those disconnects, we'll deal with them in those individual species boards as needed.

VICE-CHAIR CIMINO: Agreed, thank you. If no other discussion on this, with one noted exception, I'm curious if there is any objection to this. **Okay, it looks like motion carries without objection. You have one abstention from NOAA Fisheries.**

COMMITTEE REPORTS

VICE-CHAIR CIMINO: Okay, we're going to be doing Committee Reports next.

MS. KERNS: Lisa, you're here, yes?

ACFHP

DR. LISA HAVEL: Sorry I couldn't be there in person, but we thought it was best to not expose you all to COVID. I'm going to start with the ACFHP update, and the ACFHP update is very short. We met November 8 through 10th, so we just wrapped up about 20 minutes ago. We discussed plans for the transition to the new ACFHP Director, which should be taking place hopefully by January 1st they can get started.

We received a presentation from the Nature Conservancy on the funded projects that we helped with in New Jersey, and we spent the majority of our time on strategic and action planning. That will continue through early 2023, and hopefully those will be released, I'm hoping by early spring.

We welcomed two new members, Robert Atwood from New Hampshire, and Eric Schneider from Rhode Island. Our FY2024 NFHP RFP is open, and it closes on January 20, 2023. These are for our Fish Habitat Conservation Projects in any phase. We welcome everything from design through construction and monitoring.

There is no upper limit on the funding request, but it must have one-to-one nonfederal match, although federally recognized tribes are exempted. The requirements are very similar to last year's RFP, and you can find the RFP on our website at www.atlanticfishhabitat.org. As always, ACFHP would like to thank the ASMFC for your continued operational support.

HABITAT COMMITTEE

DR. HAVEL: I'll jump into the Habitat Committee now.

The Habitat Committee met on Monday, which was the 7th, and we discussed the status of the acoustics impacts, habitat management series document. Hoping that will also be released in the spring. The status of the Habitat Hotline,

which is on track to be released by Christmas, and the fish habitats of concern designations, which were included in the briefing materials for this meeting here.

There was a presentation on aquaculture updates from NOAA GARFO and from the New England and Mid-Atlantic Councils, and a presentation on the Northeast Regional Habitat Assessment Data Explorer, which was recently released by the New England and Mid-Atlantic Council. We welcomed two new members, Robert Atwood from New Hampshire and Forrest Vanderbilt from USGS, and our new Chair is Russ Babb from New Jersey, and our Vice-Chair is now Kate Wilke from The Nature Conservancy. Finally, I will go into the Fish Habitats of Concern Designations document. The Habitat Committee drafted Fish Habitats of Concern Designations for all Commission only managed species, plus Atlantic sturgeon. This is because eventually, hopefully, Atlantic sturgeon management will go back to the Commission.

Those species that are jointly managed with the Councils already have essential fish habitat and habitat area of particular concern designation. Some species designations that were drafted are specific, others are less so, and this is due both to species characteristics, and also data availability.

The Committee did not want to just describe all habitats that the species use, they use HAPC Habitat Area of Particular Concern guidelines in these designations. When making the designations they considered current Commission documents, including FMPs, species habitat fact sheets, habitat management series publications and more.

They also considered the current literature. Draft designations were shared with the Technical Committee's for edits, which were also included. As I mentioned, this draft is included in the briefing materials, and now I'm going to highlight three different species; lobster, sturgeon, and spot, just to give you a general idea of the specificity that we were working with.

For American lobster, the Committee designated Southern New England waters due to thermal stress. They acknowledge that currently the Gulf of Maine is still within the optimal temperature range, but it is warming, so it could warrant designation in the future. Gravel, cobble, boulder and embedded rock for young of year, juvenile, and adult life stages were considered such habitats of concern, and they should be protected from coastal development.

Offshore and nearshore shoal areas for egg bearing females and Grand Manan, Canada, Monhegan Island, Maine, Isle of Shoals, Maine/New Hampshire and Georges Bank. For Atlantic sturgeon, the Habitat Committee acknowledged that all NMFS critical habitat designations for the five discreet population segments, should also be included as fish habitats of concern.

Finer scale information since these designations in 2017 have come out, especially for the Hudson River in New York, York River in Virginia, and information is being gathered for North Carolina rivers as well. In 2017, when the designations were made, NMFS indicated that they did not have enough data to designate estuarine or offshore habitats, where sturgeon aggregations occurred as critical habitat, for reasons that were not unequivocally associated with particular physical or biological features.

The Habitat Committee believes that there is sufficient justification and data exists to designate fish habitats of concern, where fishery independent sampling has persistently shown juveniles to be present. NMFS Critical Habitat Designations in most cases already include the estuarine portions of many rivers.

But the Habitat Committee believes that additional estuarine areas further downstream also merit FHO status, based on persistent and documented presence of juvenile sturgeon, and their importance as a migratory pathway. For these reasons the recommendations for fish

habitats of concern also include Long Island Sound, Rockaway and Sandy Hook in the spring and the fall, Delaware Bay, Chesapeake Bay, including the Nanticoke River, and Marshyhope Creek Estuary, Western Albemarle Sound, Pamlico Sound, Winyah Bay and "Hot Spots" once specific locations are identified, and likely nearshore, the Atlantic Ocean off of North Carolina and Virginia.

For spot, for larvae FHO designations include brackish and saltwater marsh, submerged aquatic vegetation and mesohaline and polyhaline water for juveniles from Delaware to Florida, low salinity bays, and tidal marsh creeks with mud and detrital bottoms that contain their epifaunal and infaunal prey, and submerged aquatic vegetation in Chesapeake Bay in North Carolina.

For young of year in the early spring they are designating seagrass habitats, and for adults they are designating tidal creeks and estuarine bays with mud and detrital substrates which support abundant prey. They also acknowledge that bottom tending fishing gear may impact spot fish habitats of concern. With that we welcome approval of the document now, but acknowledge that it's very possible that you are probably going to want to take additional time to review for edits, and possibly would prefer to consider voting at the winter meeting.

We welcome edits, questions and feedback on these designations. I am happy to pass along any specific questions to the Habitat Committee, because I am not necessarily the expert here. But I will be sure that any questions that you do have will be answered, just possibly not right now. With that I am happy to take any questions.

VICE-CHAIR CIMINO: Great, thank you so much, Lisa. Actually, I think what I'll do is open this up for questions for Lisa on everything presented. But also open it for comments and concerns on the FHO as presented. Chris Batsavage, go ahead.

MR. CHRIS BATSAVAGE: Thank you, Lisa, for the presentation. Actually, out of the examples you gave I had questions about the spot FHOs and also

sturgeon. Start with spot, and this also applies to weakfish and Atlantic croaker, where it said the bottom tending fishing gears may impact FHOCs. I was wondering what the impact or concerns are with just bottom disturbing gears to the estuarine habitats for those three species, and any other estuarine dependent species. I'll just stop there as my first question.

DR. HAVEL: I know that came from the sciaenid habitat source document, the Habitat Management Series document, and so that might be why it's only for certain species, because we're citing that particular document, and I think it only cited certain species there. With that being said, it's very possible that the bottom tending gear could be impacting other species as well. But we just wanted to make sure there was a citation for that.

MR. BATSAVAGE: Thanks for the explanation, it wasn't really clear to me. It almost reads like it's more of a bycatch concern, which that is a concern, but maybe it is, maybe it isn't a habitat concern. I just had a question about that. The second one on sturgeon. I noticed that Pamlico Sound in total was listed as an FHOC, but just Western Albemarle Sound in North Carolina got that designation. I think there is pretty good information to show that Western Albemarle Sound definitely is an area of higher sturgeon abundance. Pamlico Sound is pretty big. I'm not aware of any information that shows that the entire Pamlico Sound is an FHOC. That might be more of a question/comment on that one. Thanks.

MS. HAVEL: Yes, thank you for that. I know who wrote that up, and I'll be happy to pass it back to Dr. Laney, to make sure that we have enough citations in there to warrant all of Pamlico Sound, if that's what the full Habitat Committee thinks. Otherwise, we'll go back and review and narrow it down.

VICE-CHAIR CIMINO: Thank you. Lynn.

MS. LYNN FEGLEY: I had questions regarding sturgeons. I think I'll share what I would like to do is put in a plug for following Lisa's recommendation to vote on at the winter meeting to provide us with some review, and provide questions and feedback. But my question on sturgeon, you know the Marshyhope estuary was specifically mentioned in there.

I'm pretty sure that I saw in the press that we had a large hatchery facility that was applying for permits to put a facility way up high, you know more toward the headwaters of that creek. That situation has been diffused. You know we're sort of past that threat. But it was worrisome, because of the large amount of discharge that would enter into the Marshyhope, and how that could affect the spawning population of sturgeon that are present in that creek.

My question is really particularly, it stated the Marshyhope Estuary. But I think one of the issues that we had was, I just wonder if there was discussion about taking this much further upstream, and sort of what the dividing line are, since this was now up in sort of more freshwater areas, but could trickle down to impact sturgeon.

DR. HAVEL: That is an excellent question. If the current critical habitat designations don't already cover that, we can discuss, to make sure that the whole area is covered, if that is what the Policy Board thinks is warranted. I think we were focusing more downstream, because this was current critical habitat designation. But we can doublecheck to make sure that the entire area is covered.

VICE-CHAIR CIMINO: Jim Gilmore.

MR. JAMES J. GILMORE, JR.: I concur with Lynn. I think it might be better to talk about this at the winter meeting. The immediate question I have is just that really with Atlantic sturgeon. DEC has been funding research for quite a few years now. The last, I guess the cited reference in here is from a 2015 study. But we've got probably another five or six years of data.

Just in terms of, I don't know if those reports ever got into the consideration, but really want to doublecheck on that. Just if you know now, if you even are aware of those, and then secondly, again, I think it would be better to delay a little bit on this, until we make sure we've got all the relevant information.

DR. HAVEL: Yes, thanks. If it is not cited, it is possible that it was still considered, but for some reason didn't make it into the publication, for one reason or another. If you or your staff want to share that with, I guess now Toni, since I'll be stepping down soon, so that we can make sure that it's considered. Happy to share that with everyone, so that we can possibly plug it into the document.

VICE-CHAIR CIMINO: Yes, I appreciate all the hard work put into this. I think we already have, if not some edits, some additional questions that need looking into. I think we could all benefit from some review. You know the concept of moving this forward now is, I think in general the group felt like the vast majority of work has been done on this.

I don't think that changes that fact. I think really the time that is needed now is for some review, and maybe some possible, edits, additions. But I'll once again look around for the will of the Board. Is there any objection to kind of holding on, getting some questions answered, and taking this back up again at the winter meeting? Actually, let's have Toni give a follow first.

MS. KERNS: Just for process wise. What I will do is send a reminder, probably right after Thanksgiving, for edits and comments. I have the questions and comments that you guys have provided today, and I'll start with those. But if we could get those to me, maybe by the end of the first week of December, so that then I can go back to the Habitat Committee and work with them on the specific questions that you all have that we want to look at in the

document, so that we can get it back in time for the winter meeting.

VICE-CHAIR CIMINO: Okay, I've seen a few head nods, so I think that is how we'll proceed there. Then again, thank you, Lisa.

LAW ENFORCEMENT

VICE-CHAIR CIMINO: I think that moves us to the Law Enforcement Report, and Toni will handle that.

MS. KERNS: The Law Enforcement Committee met this week to look at a working draft of the Vessel Tracker Application that ACCSP is providing, so that's the interface that will show the Enforcement Committee the tracks of the vessel. Julie gave them sort of a demonstration, to show how the vessel tracked the pier, how you can see speed, and other information.

They provided some feedback to her on some things that they have for a wish list, and they're going to be working on that. The Committee also discussed the size limit provision that is being considered change for the Gulf of Maine/Georges Bank lobster fishery, in the context of how that could need us to have changes for the Mitchell Provision that is within the Magnuson-Stevens Act that the Lobster Board talked about.

Previous to the Lobster Board meeting, the Law Enforcement Committee had said that some aspects of this will be difficult to enforce, because it can open up some loopholes to allow U.S. fishermen to try to get smaller size lobster caught, and then into the market, where that wouldn't be legal for them.

Just the Committee discussed some additional ways that if there is a different size limit for imports and the U.S. fishery. Ways that we can try to prevent some of those loopholes. They are going to go home and talk to the states about different things that might be a possibility to do, if this provision does move forward, so that we can have better enforcement with those different size limits. The Committee also discussed the enforceability guidelines. They are continuing to work on making

changes to those guidelines, to reflect how enforcement is occurring now. When we first redid the guidelines in 2015, the use of drones and different types of technology weren't in effect at that time. They are making changes to reflect current enforcement, and hope they will have a finalized draft for the Board to consider at the May meeting. Then they went to their closed session, and that's all I have. I can take any questions.

VICE-CHAIR CIMINO: John.

MR. JOHN CLARK: Just some more details on the trackers. You are referring to the trackers for the lobster fishery, and you said it's going to track speed also. I mean our enforcement is not going to be expected to kind of write speeding tickets, when the speed limits go into effect, or is that part of it?

MS. KERNS: I was not in the room when they talked about the demonstration, and in the nook that I was provided, it had speed identified. I'll have to come back to you and let you know.

MR. CLARK: I'm just curious that I don't recall that coming up. I thought the tracking was more to make sure they are not in the same areas. I didn't know that speed was going to be part of it, but seeing all the bruhaha about the speed limits that could be imposed by the right whale, I'm just curious.

MS. KERNS: I'll go out on a limb, but it does ping every minute, and you can see where it is, so there might be some way to figure out speed within the track. But I'm not making any promises. The group also did talk about how to enforce, potentially, that speed rule if it does come into play. They discussed how within the current speed rules you mostly use AIS to enforce those, and that 65 foot and greater vessels often have AIS.

There are a limited number of enforcement vessels that have the capability to enforce using

AIS. But then they also talked about that NOAA is doing some experimentation with other devices for tracking speed, that could be done in particular on the smaller vessels. Vessels that are 35 feet to 65 feet do not typically have AIS on them.

They were using radar and another technology that I cannot remember off the top of my head right now, as a possibility that state enforcement officers requested that NOAA provide them with some guidance on how they think that the state can best help enforce that, knowing that those state vessels do not have access to the technologies at this time that they are considering. If they need those state vessels to have technology, then they are going to need resources to get them.

VICE-CHAIR CIMINO: Thank you, any other questions? Go ahead, Dan.

MR. DANIEL McKIERNAN: I'll be brief. Toni, in the disposition of lobsters coming into this country from Canada I think go to two places, one a processing facility, and then retail markets. Was there talk at the Law Enforcement Committee of maybe allowing the undersized Canadian imports to go into a processing house, where it would be like chain of custody issues could be resolved, as opposed to the wholesale and retail distribution?

MS. KERNS: We did talk about, in different states it is dealt with a little bit differently, but they did talk about in some cases it does go straight to the processor, and other cases it goes to a retail market, and that everything is consolidated into one box or one car when it comes into that dealer/processor.

Often you are going to find illegal lobster in that, whether it is short or oversized or eggheads. That was part of the discussion of like how you deal with that. They did not come up with any solid recommendations. They wanted to go home and be able to talk to the state, and then come back and make recommendations. But there was some recognition that it does go to two different places at times.

VICE-CHAIR CIMINO: Any other questions? Go ahead, Loren.

MR. LOREN W. LUSTIG: I've been concerned over the last several months, if not years, about lowered budgetary support for conservation law enforcement, as we've seen in other sorts of law enforcement agencies. Was there any talk in the Law Enforcement Committee regarding that, that you could give us an update regarding that question?

MS. KERNS: There wasn't a discussion in general about it that I was present for. I don't know if the officers discussed this during their closed session or not, Loren, and like a side note of that was what I just reported on, in the sense that we know that enforcement for right whale measures.

Whether it be the speed rule, or whatever comes out of changes to the fishery is a priority for NOAA. If they need the states to help then the states are going to need resources for that, and the Law Enforcement Officers did send that message or carried that message to the NOAA Law Enforcement representative that was there.

VICE-CHAIR CIMINO: Any other questions?

PROGRESS UPDATE FOR THE ONGOING STOCK ASSESSMENTS

VICE-CHAIR CIMINO: We can move on to a Progress Update for the Ongoing Stock Assessments. We have both Katie and Jeff.

MS. KERNS: Kristen is also going to come up as well.

BLACK DRUM

MR. JEFF J. KIPP: I'll give updates on the black drum assessment, red drum assessment and black sea bass assessment. For the black drum assessment, the SAS has completed this estimate, and the full Technical Committee has

reviewed and approved the assessment for peer review. The assessment was forwarded to the Review Panel at the end of October, and the Review Workshop is currently being planned. We anticipate presenting the assessment and peer review to the Sciaenid Board at the Commission's winter meeting.

RED DRUM

MR. KIPP: For red drum, although not on the agenda, I'll give a quick update on that assessment that has just begun. Following the completion of the simulation assessment earlier this year to evaluate performance of several candidate assessment approaches, and guide modeling in the next benchmark. We've started some initial planning steps for the benchmark stock assessment that is set to be complete in the summer of 2024. The Technical Committee and Stock Assessment Subcommittee will be meeting at the end of the month to finalize terms of reference, and a timeline that will subsequently be forwarded to the Sciaenid Board for approval.

BLACK SEA BASS

MR. KIPP: Then for black sea bass, I'm not a member of the Assessment Working Group for that assessment, but I will relay an update on the ongoing research track assessment from the Working Group. The research track assessment has experienced some slow data deliveries, as well as some workload bottlenecks that have delayed progress.

The Work Group met this past Friday, actually, and has decided to request an extension to the current assessment timeline, which had a peer review scheduled for the end of February, 2023. As of yet, it is undetermined if the delay will be granted by the NRCC, who will it ultimately be up to. Still a little bit of uncertainty in when the peer review will be occurring for that assessment. But those are my updates, and I can stop there and see if there are any questions on those.

VICE-CHAIR CIMINO: Thanks, Jeff, any questions?

BLUEFISH

DR. KATIE DREW: I'm going to give an update on the bluefish assessment, which is also going through a research track assessment through the SAW/SARC process. The assessment is essentially completed at this point. The final report is being finalized this week, so that it can be transferred to the peer review panel next week, to maintain our scheduled review date of the first week of December for the SARC review.

Basically, bluefish has moved from the ASAP model to a statistical catch at age model, using the Woods Hole Assessment Model Framework, which is a state-space model. We're excited to see some of the progress and advances made for that specific species, and hopefully the review panel will agree that this is an improvement on the current ASAP model. But I am happy to take any questions about that.

VICE-CHAIR CIMINO: Thank you, any questions for Katie?

SPINY DOGFISH

DR. KRISTEN ANSTEAD: All right, I'll give a brief update on the spiny dogfish assessment. The Spiny Dogfish Working Group is currently wrapping up the research track assessment that was initiated last year. We're going to peer review with bluefish the week of December 5th, and we're putting forth a length-based stock synthesis model as our preferred model for the species.

While the base run of the model relies on the spring index from the Northeast Fisheries Science Center Trawl, there are several sensitivities runs with additional indices and configurations. In addition to the stock synthesis model, we have also completed a bridge run of the previously used stochastic estimator model, and have some limited tools that are new to dogfish as supporting models.

To address past research recommendations, the Working Group has also reevaluated the

growth, by looking at updated length and age data, and explored the use of a bass model to examine the shifting spatial distribution of dogfish, and indices that consider environmental covariates. This assessment will be peer reviewed in about a month. I guess probably they come to the Board at the winter meeting.

VICE-CHAIR CIMINO: We're agreeing with your guess.

MS. KERNS: That's I think so for those on the webinar.

VICE-CHAIR CIMINO: Any questions for Kristen? Seeing none; I appreciate that and I'm honestly very excited. Well, there is a little bit of trepidation, I have to say. Especially bluefish, I think it's great to see that moving in that direction and moving forward.

OTHER BUSINESS

VICE-CHAIR CIMINO: With no other questions there, we have **no** noncompliance findings, happy to say, and we did have that one other agenda item that we've added under Other Business. I'll let Bob go, and then see if there are any others.

LETTER OF SUPPORT FOR REINVESTING IN SHORELINE ECONOMIES AND ECOSYSTEMS (RISEE) ACT

EXECUTIVE DIRECTOR BEAL: Yes, just as I mentioned in the Executive Committee Summary, there is a draft letter that was distributed to the full Policy Board on reinvesting shoreline economies and ecosystems, the RISEE Act. The letter is currently addressed to Senate Leadership. Just a quick bit of background.

As I said, our revenue is generated from offshore wind leases and wind power generation, 50 percent of the money would go to the U.S. Treasury, 35.5 percent would go to coastal states, 12.5 would enter the National Oceans and Coastal Security Fund, and be distributed through competitive grants and formula grants through the states.

It's a pretty complex allocation of money, but it does have the potential to generate a lot of money to the coastal states, and provide the opportunity for them to respond to some of the wind generation impacts from those activities. The push to hopefully get this through, similar to RAWA by the end of this Congress is motivated by the fact that there are a number of new leases coming online, a couple on the west coast, one down in the Gulf, and I think one additional one potentially here on the East Coast.

If this Act is implemented by the end of the calendar year, then the revenue from those leases can actually be part of this distribution formula, and we have the potential to get a lot of money out to the states. That is the sort of urgency that I've been notified about from the Congressional Office that I talked to. Happy to answer any questions.

The draft letter has been reviewed by the Executive Committee twice, and made some small tweaks to get all the Executive Committee members comfortable with the letter. I think it is ready to go from our perspective, but if there are questions about the Act or details about the letter, I'm happy to consider it.

VICE-CHAIR CIMINO: Questions or comments, and I see one hand already, so Pat Geer, go ahead.

MR. PAT GEER: Bob, just it might be the devil in the details, but for the national and state grants, was there any discussion on what kind of grants do they have to be related to species that are going to be impacted by wind, or are they just general grants?

EXECUTIVE DIRECTOR BEAL: My understanding is they are general grants. I have not seen linkages between impacted species and the grant application process. That's the best answer I can give you.

VICE-CHAIR CIMINO: Not seeing any other hands, as far as questions or comments. You know there is a timing issue here, so the will of the Board. I don't know if we necessarily need a motion, but just anyone speaking to approval of this letter to go out, I would be happy to hear. Well, I'm seeing some thumbs up and Bill's hand. Go ahead, Bill.

MR. HYATT: I'll just add we've been asked by a Senators Office to approve and support something that is in our best interest, and I think we should move as quickly as possible.

VICE-CHAIR CIMINO: Thanks, Bill. If we've got general consent, I think that sounds good. I'm seeing a lot of heads nodding and I know mine is as well. That sounds great, so we'll move that forward. Is there any other business to come before us?

MS. KERNS: I think Lisa is still on, and I'm sorry that she couldn't be here in person, and I just wanted to say thank you, Lisa, for all your work, and thank you for being online this week. It was a great help to both Pat and myself. We are going to so very much miss you at the Commission, but we're super excited for your move to Texas, for you to be closer with family, and for Philip's new advancement. We wish you the best of luck, and we hope that this is not the last time we will see you.

MS. HAVEL: Thank you, Toni, it's been a pleasure working with all of you the last eight years. Hopefully I can get back to visit you folks soon.

VICE-CHAIR CIMINO: Russ Babb and I certainly share that sentiment.

ADJOURNMENT

VICE-CHAIR CIMINO: Well, with that I have the pleasure of sitting up here and playing host, and just saying, I don't think it could have gone any better. I am so thankful to all of you for coming. It's been a long time in the making, and it feels fantastic to be here in person together. I think we had a great week with a lot of important decisions made. Absolute pleasure, and safe travels to all of

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you, but especially those of you heading into this ugly storm. Thank you so much, everyone.

(Whereupon the meeting adjourned at 1:00 p.m. on Thursday, November 10, 2022)