

Atlantic States Marine Fisheries Commission

Executive Committee

Wednesday, August 3, 2022

8:00 – 10:00 am

Draft Agenda

The order in which these items will be taken is subject to change;
other items may be added as necessary.

1. Welcome/Introductions (*S. Woodward*) 8:00 a.m.
2. Committee Consent 8:05 a.m.
 - Approval of Agenda
 - Approval of Meeting Summary from May 2022
3. Public Comment 8:10 p.m.
4. CARES Act Update 8:15 a.m.
5. Report of *De Minimis* Work Group 8:30 a.m.
6. Consider Approval of Updated Investment Policy **Action** 9:00 a.m.
7. Review Letter of Support for Resilient Coasts and Estuaries Act 9:15 a.m.
8. Discuss State Support for the Responsible Offshore Science Alliance (ROSA) 9:30 a.m.
9. Review Updates to the Appeals Process 9:50 a.m.
10. Other Business Adjourn 10:00 a.m.

The meeting will be held at The Westin Crystal City (1800 Richmond Highway, Arlington, VA; 703.486.1111)
and via webinar; click [here](#) for details

Sustainable and Cooperative Management of Atlantic Coastal Fisheries



Atlantic States Marine Fisheries Commission

1050 N. Highland Street • Suite 200A-N • Arlington, VA 22201
703.842.0740 • 703.842.0741 (fax) • www.asmf.org

De minimis White Paper

August 2022

The Atlantic States Marine Fisheries Commission (Commission) includes *de minimis* provisions in interstate Fishery Management Plans (FMP) to reduce the management burden for states that have a negligible effect on the conservation of a species. The ISFMP Charter includes a definition of *de minimis* and the requirement to include *de minimis* provisions in the FMP.

Definition: De minimis – A situation in which, under existing conditions of the stock and the scope of the fishery, conservation and enforcement actions taken by an individual state would be expected to contribute insignificantly to a coastwide conservation program required by an FMP or amendment.

FMP Provisions: ... and provided that each fishery management plan shall address the extent to which States meeting de minimis criteria may be exempted from specific management requirements of the fishery management plan to the extent that action by the particular States to implement and enforce the plan is not necessary for attainment of the fishery management plan's objectives and the conservation of the fishery.

The *de minimis* provisions in FMPs vary by species and include a range of requirements for management measures, reporting requirements, and *de minimis* qualification thresholds. This white paper outlines a draft policy that would set *de minimis* standards for Commission FMPs. The draft policy proposes to allow species Boards to deviate from these standards to address unique characteristics of a fishery. It is noted, Federal FMPs do not recognize *de minimis* standards; therefore, any *de minimis* measure implemented in a Commission FMP for jointly managed species could result in inconsistent measures between state and federal waters.

Draft De Minimis Policy

De minimis provisions within Commission FMPs are designed to reduce the management burden for states that have a negligible effect on the conservation of a species. This draft policy outlines *de minimis* standards for Commission FMPs. A species board may deviate from these standards to address unique characteristics of a fishery. If a board deviates from the Policy's standards, a rationale will be provided within the FMP.

Minimum Standards

By definition states that meet *de minimis* standards would have a negligible effect on the conservation of a species, therefore those states should not have to change regulations year-to-year to meet FMP requirements. Each FMP will establish a set of measures for *de minimis* states to implement that would not have to change year-to-year. These measures would provide a minimal level of the species conservation as well as prevent regulatory loop holes. These measures could be for both the commercial and recreational fishery or different measures could be set for each fishery.

De minimis Fishery Designation

De minimis can apply to commercial or recreational fisheries or both. In some cases, a state could meet *de minimis* requirement for one fishery but not both, and depending on how the FMP defines *de minimis* the state may not meet the requirement and thus would not be considered *de minimis* (e.g. The FMP for species X sets the *de minimis* requirement by looking at total commercial and recreational landings together, state A has a very small commercial fishery but a recreational fishery that brings them above the *de minimis* threshold. If the requirements had been separate, state A would have met *de minimis* for the commercial fishery but not the recreational fishery).

Option 1: Each species board will review the *de minimis* provisions to determine how *de minimis* will be considered (both fisheries together, separated or only one sector).

Option 2: *De minimis* provisions will be considered separately for commercial and recreational fisheries or for only one sector only.

Option 3: *De minimis* provisions will be considered with commercial and recreational fisheries combined.

De minimis Thresholds

De minimis thresholds will be based on the average landings from the previous X (see options below) years of landings. The averaging of multiple years of data prevents a state from taking action as a result of a rare event.

Options for the number of years (X) data would be averaged:

Option 1: two years of data

Option 2: three years of data

A state can be considered *de minimis* if the average landings for the last X years is less than Y % (see options below) of the coastwide landings.

Options for the percent of the coastwide landings (Y):

Option 1: Task the species boards to have the technical committee review the *de minimis* thresholds to determine an appropriate level that would have a negligible effect on the conservation of the species.

Option 2: less than 1% of the average X years of landings data

Option 3: less than 0.5% of the average X years of landings data

Sampling Requirements

De minimis states can be exempt from sampling requirements because it may be difficult to meet the sampling requirements of the plan when there are minimal landings. For stock assessments it may be important to have some biological samples on the outer edges of a species range where *de minimis* states often fall. For data poor species, it may be necessary for states to collect biological samples, even with minimal landings. Species boards shall have the stock assessment subcommittee or technical committee review the sampling requirements for *de minimis* states to determine what level, if any, is appropriate.

Current FMP *De Minimis* Measures

Species	<i>De minimis</i> Qualification (include # of landing years if applicable)	Sector Application: Commercial and/or Recreational; Both (can not split them)	Exemption From:
American Eel	Applicable by life stage if, for the proceeding 2 years, the average commercial landings (by weight) of that life stage constitute less than 1% of coastwide commercial landings for that life stage for the same 2 year period.	Commercial	Having to adopt the commercial and recreational fishery regulatoins for that particular life stage and any fishery-dependent monitoring elements for that life stage and any fishery-dependent monitoring elements for that life stage.
American Lobster	Average of last 2 years commercial landings is not more than 40,000 lbs	Commercial	All FMP requirements except coastwide measures and those deemed necessary by the Board when <i>de minimis</i> is granted
Atlantic Croaker	Average commercial or recreational landings (by weight) constitute <1% of the average coastwide commercial or recreational landings for the most recent three years in which data is available.	Commercial and/or recreational	A state that qualifies for <i>de minimis</i> for commercial and/or recreational fisheries is exempt from implementing management response for the <i>de minimis</i> fishery when the 30% moderate response level from the Traffic Light Approach is triggered.
Atlantic Herring	Average of last three years' combined commercial landings (weight) is < 1% of coastwide for same two years	Commercial	Not specified in Plan
Atlantic Menhaden	A state's bait landings must be less than 1% of the total coastwide bait landings for the most recent two years. State(s) with a reduction fishery are not eligible for <i>de minimis</i> consideration	Commercial (There is no management of the recreational fishery)	If granted <i>de minimis</i> status by the Board, states are exempt from implementing biological sampling as well as pound net catch and effort data reporting.
Atlantic Sturgeon	NA	NA	NA

Black Drum	The average combined commercial and recreational landings (by weight) constitute less than 1% of the average coastwide commercial and recreational landings in the most recent three years in which data is available.	Both	Not specified in Plan
Black Sea Bass	NA	NA	NA
Bluefish	Commercial landings less than 0.1% of the total coastwide commercial landings in the last preceding year for which data is available	Commercial	Allocated 0.1% of commercial quota. Exempt from the Biological Monitoring Program.
Cobia	In order for a state to be considered <i>de minimis</i> for its recreational fishery, its recreational landings for 2 of the previous 3 years must be less than 1% of the coastwide recreational landings for the same time period. In order for a state to be considered <i>de minimis</i> for its commercial fishery, its commercial landings for 2 of the previous 3 years must be less than 2% of the coastwide commercial landings for the same time period.	Commercial and/or recreational	A recreational <i>de minimis</i> state may choose to match the recreational management measures implemented by an adjacent non- <i>de minimis</i> state (or the nearest non- <i>de minimis</i> state if none are adjacent) or limit its recreational fishery to 1 fish per vessel per trip with a minimum size of 33 inches fork length (or the total length equivalent, 37 inches). Commercial <i>de minimis</i> states are subject to the same commercial regulations as the rest of the coastwide fishery but are not required to monitor their in-season harvests. To account for potential landings in <i>de minimis</i> states not tracked in-season against the quota, 4% of the commercial quota or 5,000 pounds, whichever is less, is set aside and not accessible to non- <i>de minimis</i> states.
Horseshoe Crab	For the last 2 years, a state's combined average landings, based on numbers, must be < 1% of coastwide landings for same 2-year period	Commercial	States that qualify for <i>de minimis</i> status are not required to implement any horseshoe crab harvest restriction measures, but are required to implement components A, B, E and F of the monitoring program.

Current FMP *De Minimis* Measures

Jonah Crab	States may qualify for <i>de minimis</i> status if, for the preceding three years for which data are available, their average commercial landings (by weight) constitute less than 10 1% of the average coastwide commercial catch	Commercial	States who qualify for <i>de minimis</i> are not required to implement fishery independent and port/sea sampling requirements
Northern Shrimp	NA	NA	NA
Red Drum	The PRT chose to evaluate an individual state's contribution to the fishery by comparing the two-year average of total landings of the state to that of the management unit.	Not specified in Plan	<i>De minimis</i> status does not exempt either state from any requirement; it may exempt them from future management measures implemented through addenda to Amendment 2, as determined by the Board.
Scup	NA	NA	NA
Shad and River Herring	A state can request <i>de minimis</i> status if commercial landings of river herring or shad are less than 1% of the coastwide commercial total.	Commercial	<i>De minimis</i> status exempts the state from the subsampling requirements for commercial biological data.
Spanish Mackerel	The previous three-year average combined commercial and recreational catch is less than 1% of the previous three-year average coastwide combined commercial and recreational catch.	Both	Those states that qualify for <i>de minimis</i> are not required to implement any monitoring requirements, as none are included in the plan.
Spiny Dogfish	Commercial landings are < 1% of coastwide commercial landings	Commercial only	State is exempt from the monitoring requirements of the commercial spiny dogfish fishery for the following fishing year. However, must continue to report any spiny dogfish commercial or recreational landings within their jurisdiction via annual state compliance reports.
Coastal Sharks	Not specified in Plan; determined on a case by case basis.	Not specified in Plan	Not specified in Plan, but unnecessary to implement all regulatory requirements in the FMP

Spot	A state qualifies for <i>de minimis</i> status if its past 3-years' average of the combined commercial and recreational catch is less than 1% of the past 3-years' average of the coastwide combined commercial and recreational catch.	Both	A state that qualifies for <i>de minimis</i> for both fisheries is exempt from implementing management response for the <i>de minimis</i> fisheries when the 30% moderate response level from the Traffic Light Approach is triggered.
Spotted Sea Trout	A state qualifies for <i>de minimis</i> status if its previous three-year average combined commercial and recreational catch is less than 1% of the previous three-year average coastwide combined commercial and recreational catch.	Both	Those states that qualify for <i>de minimis</i> are not required to implement any monitoring requirements, as none are included in the plan.
Striped Bass	Average of last two years' combined commercial and recreational landings (lbs) is < 1% of coastwide for same two years	Both	State requested requirements that the Board approves (except annual reporting)
Summer Flounder	Landings from the last preceding calendar year which data are available are less than 0.1% of the total coastwide quota for that year	Commercial	State quota will be 0.1 % of the coastwide quota and subtracted from the coastwide quota before allocation to the other states (state waters only)
Tautog	Most recent years commercial landings are < 1% of coastwide commercial landings or less than 10,000 lbs	Commercial	The <i>de minimis</i> state is required to implement the commercial minimum size provisions, the pot and trap degradable fastener provisions, and regulations consistent with those in the recreational fishery (including possession limits and seasonal closures). The state must monitor its landings on at least an annual basis. If granted <i>de minimis</i> status, a state must continue to collect the required 200 age/length samples.
Weakfish	Combined average commercial and recreational landings (by weight) constitute less than 1% of the coastwide commercial and	Both	The recreational or commercial fishing provisions of Amendment 4, except BRD requirements and annual reporting

Current FMP *De Minimis* Measures

	recreational landings for the most recent two year period.		
Winter Flounder	Preceding three years landings for which sector data are available average <1% sector coastwide landings	Commercial and/or recreational	Biological monitoring/sub-sampling activities for the sector for which <i>de minimis</i> has been granted

Atlantic States Marine Fisheries Commission
Investment Policy

I. Objective/Type of Fund

This Investment Policy applies to the Reserve Fund of the Atlantic States Marine Fisheries Commission (Commission). The purpose of this policy is to ensure the Commission maintains a prudent level of financial resources to protect against reducing service levels or increasing fees because of temporary revenue shortfalls or unpredicted one-time expenditures. The Commission's financial structure maintains an Operating Fund and a Reserve Fund.

This Policy will establish a clear understanding as to the applicable investment objectives and policies of the Reserve Funds. This Policy will:

1. Establish reasonable expectations, objectives and guidelines in the investment of ASMFC assets.
2. Encourage effective communication between the Investment Professional and the Commission.
3. Define and assign the responsibilities for all parties.
4. Offer guidance and limitations to the Investment Professional regarding the investment of assets.
5. Establish the relevant investment horizon for which the Commission's assets will be managed.

This Policy is not a contract. It is intended to be a summary of an investment philosophy that provides guidance for the Commission and its advisors.

II. Financial Control of the Commission's Assets

Financial control of the Commission's assets will be vested in the Executive Director, Administrative Oversight Committee and the Executive Committee as defined below. It is anticipated that the Executive Director will delegate many of these responsibilities to the Director of Finance and Administration.

A. Executive Director

1. The Executive Director will write and revise the Commission's Investment Policy.
2. The Executive Director will hire and or/replace an Investment Professional.
3. The Executive Director will recommend the dollar amounts to be placed in the different investment pools after consulting the investment professional.

4. The Executive Director will prepare an annual report on the status of the Commission's investments for the Administrative Oversight and Executive Committees.
5. The Executive Director will schedule the maturities of the investments in consultation with the Investment Professional.

B. Administrative Oversight Committee

1. The Administrative Oversight Committee (AOC) will annually review the Investment Policy and recommend changes if needed.
2. The AOC will review the annual investment report.

C. Executive Committee

1. The Executive Committee has final approval of the Investment Policy and any future revisions.
2. The Executive Committee will review annual investment reports and give any guidance it deems appropriate to the Executive Director and the AOC.

III. Description of Funds

The Executive Director is responsible to the Commission for the administration of the Operating Fund to accommodate the cash flow needs of the Commission. It is expected that the Director of Finance & Administration will be delegated the responsibility of managing these funds on a day-to-day basis.

A. Operating Fund

The Operating Fund will maintain four months' General & Administrative operating expenses for the Commission.

B. Reserve Fund

1. The purpose of the Long-Term Fund is twofold: 1) to maintain the financial stability of the Commission; and 2) to meet expenses resulting from unanticipated activities of a nonrecurring nature, or a delay in receipt of federal or state funds. This fund should also be used to avoid the need for service level reductions in the event that economic conditions or other circumstances cause revenues to be lower than budgeted.

2. The primary objective of the Reserve Fund is total return to outpace inflation without exposure to undue risk over time.
3. The Reserve Fund will contain anything exceeding the needs of the Operating Fund. The Commission's annual budget shall be used as a guide to calculate the recommended amount in this reserve. The Executive Committee shall determine an appropriate level of funding for this reserve on an annual basis. It is expected that this determination will be made when the Commission's annual budget is adopted.
4. The Reserve Fund will consist of funds expected to be available for investment for 6 months to 3 years.

<u>Asset Class</u> <u>Range</u>	<u>Current Target</u>	<u>Target</u>
Fixed Income/Bonds	20%	15 - 50%
Global Equities	32%	25 - 80%
Real Estate Securities	6%	0 - 15%
Alternative Investments	25%	0 - 30%
Global Allocation/Tactical	15%	0 - 30%
Cash	2%	0 - 30%

5. The Executive Director in consultation with the Commission Chair and the Investment Professional will make investment decisions.
6. The Commission shall retain an Investment Professional who will meet with the AOC on an annual basis. The AOC may grant discretionary authority to the Investment Professional to make investment changes and to rebalance the portfolio within the Asset Class target ranges set forth in these guidelines.

IV. Use of Reserve Funds

The Commission authorizes the Commission Chair to approve transfers up to \$150,000 from the Reserve Fund to meet immediate obligations of the Commission. This approval must be in writing. The Executive Committee must authorize the use of Reserve funds prior to these funds being used to pay obligations of the Commission when these transfers exceed \$150,000. The Executive Director shall identify the need for the funds and the expected level of funds needed for any requested draw against these reserves.

The Executive Director, with the concurrence of the Commission Chair, is authorized to draw funds from the Reserve Fund if necessary to meet unavoidable expenses if receipt of income is delayed, provided that when the expected income is received (within two months), the funds drawn will be re-paid.

V. Reporting Requirements

The Executive Director will prepare an annual report on the Reserve Fund, which will contain a schedule of investments, interest income year-to-date, current yield and a maturation schedule. This report will be distributed to the AOC and the Executive Committee. The Reserve Fund report will also contain information regarding performance compared to objectives and performance compared to an appropriate index.



Atlantic States Marine Fisheries Commission

1050 N. Highland Street • Suite 200A-N • Arlington, VA 22201
703.842.0740 • 703.842.0741 (fax) • www.asmf.org

A.G. "Spud" Woodward (GA), Chair Joseph Cimino (NJ), Vice-Chair Robert E. Beal, Executive Director

Sustainable and Cooperative Management of Atlantic Coastal Fisheries

DATE

The Honorable Raúl M. Grijalva
1511 Longworth House Office Building
Washington, DC 20515-0303

The Honorable Bruce Westerman
202 Cannon House Office Building
Washington, DC 20515-0404

Dear Chair Grijalva and Ranking Member Westerman,

The Atlantic States Marine Fisheries Commission (Commission) is pleased to **support** H.R. 7801, the Resilient Coasts and Estuaries Act.

The Commission is a Compact of the 15 Atlantic coastal states that manages nearshore marine fisheries which occupy multiple states' waters. Congress approved the Compact in 1942, and granted the Commission management authority in 1984 and 1993 through the Atlantic Striped Bass Conservation Act and the Atlantic Coastal Fisheries Cooperative Management Act, respectively. Today, the Commission manages 27 of the coast's most productive and iconic fisheries, nine of which are cooperatively managed with our federal partners.

H.R. 7801 would enshrine the Coastal and Estuarine Lands Conservation Program (CELCP) in statute and redesignate it as the Coastal and Estuarine Resilience and Restoration Program (CERRP). CELCP grants have historically provided important resources to state and local governments for property acquisition to protect coastal ecosystems and wetlands. The Commission appreciates the prioritization of projects that will mitigate "the adverse effects of climate change, including through the storage of blue carbon, and to facilitate inland migration of coastal ecosystems in response to sea level rise." Additionally, the Commission supports provisions that would allow the restoration of developed property in vulnerable coastal and estuarine areas.

Seventeen of the 30 designated National Estuarine Research Reserves (NERRS) are located in Commission Member States. The Commission appreciates the cooperative management of the reserves between states, universities, and NOAA's Office for Coastal Management and strongly supports the mandate for long-term coordination, tracking and modeling of the impacts of climate change on estuarine systems.

Modern science demands that state and federal marine resource managers utilize ecosystem level solutions for the sustainable management of marine fisheries, especially for diadromous fish that spend part of their lifecycle in freshwater rivers and part in the marine environment. Incorporating shore-side habitat considerations into marine fisheries management decisions is critical as changing nearshore habitats are increasingly affecting the long-term sustainability of the nation's diadromous fisheries.

L22-**XX**

Both programs considered by H.R. 7801 represent a coordinated approach to marine resource conservation by state, federal, and regional entities – something the Commission has long supported. Finally, the Commission emphasizes that user conflicts should be considered when establishing and defining the boundaries of new National Estuarine Research Reserves in order to best balance the current and future economic benefits of our nation’s marine resources.

I hope you will join us in supporting this important piece of legislation.

Sincerely,

Robert. E. Beal

Atlantic States Marine Fisheries Commission

APPEALS PROCESS

For Executive Committee consideration on July 26, 2022 and
ISFMP Policy Board consideration on August 4, 2022.

Background

The Atlantic States Marine Fisheries Commission's interstate fisheries management process is based on the voluntary commitment and cooperation of the states. The involved states have frequently demonstrated their willingness to compromise and the overall process has proven to be very successful. However, there have been instances where a state/jurisdiction has expressed concern that the Board decisions have not been consistent with language of an FMP, resulted in unforeseen circumstances or impacts, did not follow established processes, or were based on flawed technical information. In order to address these concerns, the ISFMP Policy Board charged the Administrative Oversight Committee with "exploring and further developing an appeals process".

Under the current management process the primary policy development responsibility lies with species management boards. And, in the case of development of new fishery management plans or amendments the full Commission has final approval authority prior to implementation. The purpose of the appeals process is to provide a mechanism for a state/jurisdiction to petition for a management decision to be reconsidered, repealed or altered. The appeals process is intended to only be used in extraordinary circumstances where all other options have been exhausted. The management boards have the ability to go back and correct errors or address additional technical information through the recently clarified process on "amending or rescinding previous board actions".

During the December 2003 ISFMP Policy Board meeting, the decision was made to continue to have the Policy Board serve as the deliberative body that will consider valid appeals. This decision is consistent with the language that is included in the ISFMP Charter. However, the Charter does not provide detailed guidance on how an appeal is to be addressed.

This paper details for the Commission appeals process.

Appeal Criteria – The intent of the appeals process is to provide a state with the opportunity to have a decision made by a species management board or section reconsidered by the Policy Board. The following criteria will be used to guide what type of decisions can be appealed. In general, management measures established through the FMP/amendment/addendum process can be appealed. However, the appellant must use one of the following criteria to justify an appeal:

1. Decision not consistent with, or is contrary to, the stated goal and objectives of the current

FMP (Goal and Objective Section of FMPs/Amendments or Statement of the Problem Section of Addenda).

2. Failure to follow process as identified in the ISFMP Charter, Rules and Regulations or other ASMFC guiding documents (e.g. conservation equivalency guidance).
3. Insufficient/inaccurate/incorrect application of technical information. Examples can include but are not limited to:
 - a. If for any calculations used in the decision, an error which changes the results was identified after the decision was rendered;
 - b. If any data used as the basis for a decision, undergoes a modification which impacts results after the decision was rendered (i.e. a landings dataset is adjusted significantly due to a recalibration or application of a control rule adjustment);
 - c. If data is incorrectly identified and therefore incorrectly applied, such as a misidentification of landings information as catch information, or incorrectly assigned landings/catch to a jurisdiction;
 - d. If information used as the basis for the decision lacked scientific or statistical rigor, thereby calling in to question the sound basis for the decision;
 - e. If the historical landings, catch, or abundance time series used as a basis for a decision is found to be incorrect.

Any appeal based on criterion 3 may be verified independently by a technical body appointed by the Chair, as needed.

4. Management actions resulting in unforeseen circumstances/impacts that were not considered by the Board as the management document was developed.

The following issues could not be appealed:

1. Management measures established via emergency action
2. Out-of-compliance findings (this can be appealed but, through a separate, established process)
3. Changes to the ISFMP Charter

Appeal Initiation – The ISFMP Charter provides that a state aggrieved by a management board action can appeal to the ISFMP Policy Board. Any state can request to initiate an appeal; also a group of states can submit a unified request for an appeal. The states are represented on the Commission by three representatives that have the responsibility of acting on behalf of the states' Executive and Legislative branches of government. Therefore, in order to initiate an appeal all seated Commissioners (not proxies) of a state's caucus must agree that an appeal is warranted and must sign the letter submitted to the Commission. If a multi-state appeal is requested all the Commissioners from the requesting states must sign the letter submitted to the Commission. During meetings where an appeal is discussed proxies will be able to participate in the deliberations. Meeting specific proxies will not be permitted to vote on the final appeal determination, consistent with Commission policy.

A state (or group of states) can request and appeal on behalf of the Potomac River Fisheries Commission, District of Columbia, National Marine Fisheries Service, or the United States Fish and Wildlife Service.

The letter requesting an appeal will be submitted to the Chair of the Commission and include the measure(s) or issue(s) being appealed, the justification for the appeal, and the commitment to comply with the finding of the Policy Board. This letter must also include a demonstration that all other options to gain relief at the management board level have been exhausted. This letter must be submitted via certified mail or email at least **45 days** prior to a scheduled ASMFC Meeting Week. The Commission Chair, Vice-Chair and immediate past Chair will determine if the appeal meets the qualifying guidelines and notify the Policy Board of their decision. If the immediate past chair is no longer a commissioner the Chair will select an alternate from a state that is not affected by the appeal. Also, if the Chair, Vice-Chair or immediate past Chair is a signatory to the appeal, the Chair will select an alternate from a state that is not affected (or minimally affected) by the appeal.

Convene a “Fact Finding” Committee (optional) – Upon review of the appeal documentation, the Commission Chair, Vice-Chair and immediate past Chair (or alternate if necessary, as described above) may establish a “Fact Finding” Committee to conduct analyses and/or compile additional information if necessary. This group will be made up of individuals with the technical expertise (including legal, administrative, social, economic, or habitat expertise if necessary) and familiarity with the fishery to conduct the necessary analysis. If such a committee is convened the schedule included in the last section of this document may need to be adjusted to provide time for the Committee to conduct analyses. The Commission Chair, Vice-Chair and immediate past Chair (or alternate if necessary, as described above) may set a deadline for the Committee to complete its work to ensure the appeal is addressed in a timely manner.

ISFMP Policy Board Meeting – Following the determination that an appeal has met the qualifying guidelines, a meeting of the Policy Board will be convened at a scheduled ASMFC meeting week. The agenda of this meeting will be set to allow sufficient time for all necessary presentations and discussions. The Chair of the Commission will serve as the facilitator of the meeting. If the Chair is unable to attend the meeting or would like to more fully participate in the deliberations, the Vice-Chair of the Commission will facilitate the meeting. The ISFMP Director will provide the background on the development of the management program as well as a summary of the justification provided in the record for the management board’s action. The ISFMP Director will also present the potential impacts of the appeal on other affected states. The appellant Commissioners will present their rationale for appealing the decision and provide a suggested solution. The Policy Board will then discuss the presentations and ask any necessary questions. **If the Policy Board needs additional technical information to support a decision on an appeal, the Policy Board can request additional analysis from one of the Commission’s technical support groups. This request will be addressed prior to the Commission’s next quarterly meeting and then the Policy Board will be reconvened to take**

action on the appeal. The Policy Board can meet between quarterly meetings if the timing allows. The Policy Board will vote to determine if the management board's action was justified. A simple majority of the Policy Board is required to forward a recommendation to a management board for corrective action. If the Policy Board determines that the existing management program should be modified, it will issue a finding to that effect as well as any guidance regarding corrective action to the appropriate species management board. The referral may be worded to allow the management board flexibility in determining the details of the corrective action. If the Policy Board requires a management board to take specific corrective actions, the scope of potential corrective actions must be consistent with the presentation of management options provided to the public in the Draft Amendment or Addendum.

Upon receipt of the Policy Board's recommendation the management board will discuss the findings and make the necessary changes to address the appeal. The management board is obligated to make changes that respond to the findings of the Policy Board. A simple majority of the management board will be necessary to approve the changes.

If the management board is unable to make the changes necessary to respond to the findings of the Policy Board, the following options are available:

1. The management board can request clarification from the Policy Board on the specifics of the findings. A meeting of the Policy Board will be scheduled to ensure the requested clarification is provided to the management board to take action at the Commission's next quarterly meeting.
2. The management board can inform the Policy Board that it is unable to address the findings and the Policy Board will take action to approve changes to address the appeal.
3. The management board can request additional analyses from the technical committee or other technical support group (e.g. Management and Science Committee, Assessment Science Committee). A meeting of the appropriate technical group will be scheduled to ensure the requested information is provided to the management board to take action at the Commission's next quarterly meeting.

Appeal Products and Policy Board Authority – Following the Policy Board meeting a summary of the meeting will be developed. This summary will include a detailed description of the findings and will be forwarded to the appropriate management board and Policy Board upon completion. If the Policy Board determines that changes to the management program are necessary, the summary may include guidance to the management board for corrective action. The report of the Policy Board will be presented to the management board for action at the next scheduled meeting.

Considerations to Prevent Abuse of the Appeals Process – The appeals process is intended to be used only in extraordinary situations and is in no way intended to provide a potential avenue to preempt the established board process. The initiation of an appeal will not delay the Commission process for finding a state out of compliance nor delay or impede the imposition of

penalties for delayed compliance.

Limiting Impacts of Appeal Findings – If a state is successful in an appeal and the management program is altered, another state may be negatively impacted by the appeals decision. In order to prevent an appeals “chain reaction,” the Policy Board’s recommendation and the resulting management board’s decision will be binding on all states. All states with an interest in the fishery will be obligated to implement the changes as approved by the management board. Upon completion of the appeals process, a state is not precluded from taking further action beyond the Commission process to seek relief.

If the Policy Board supports the appeal and determines that corrective action is warranted, the potential for management changes to negatively impact other states will be evaluated by the Policy Board and the species management board. **In the case of jointly managed species, the Policy Board and the species management board should consider that corrective action could result in inconsistent measures between state and federal waters.**

Appeals Process Timeline

1. Within **15 working days** of receipt of a complete appeal request the Commission Chair, Vice-Chair, and immediate past chair (or alternate) will determine if the state has an appeal which meets the qualifying guidelines.
2. Upon a finding that the appeal meets the qualifying guidelines, the appeal will be included on the agenda of the ISFMP Policy Board meeting scheduled during the next ASMFC Meeting Week (provided an adequate time period is available for preparation of the necessary documentation).
3. Following the finding that an appeal meets the qualifying guidelines, Commission staff and the appellant commissioners will have a minimum of **15 working days** to prepare the necessary background documents.
4. The background documents will be distributed at least **15 days** prior to the Policy Board meeting.
5. If the management board requests additional information from the Policy Board or a technical support group, a meeting of the Policy Board or technical support group will be scheduled as quickly as practical to allow the management board to take action at the Commission’s next quarterly meeting.

A summary of the Policy Board meeting will be developed and distributed to all Commissioners within **15 working days** of the conclusion of the meeting.