

# Atlantic States Marine Fisheries Commission

## ISFMP Policy Board

October 19, 2017

9:30-11:30 a.m.

Norfolk, Virginia

## Draft Agenda

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

1. Welcome/Call to Order (*D. Grout*) 9:30 a.m.
2. Board Consent (*D. Grout*) 9:30 a.m.
  - Approval of Agenda
  - Approval of Proceedings from August 2017
3. Public Comment 9:35 a.m.
4. Update from the Executive Committee (*D. Grout*) 9:40 a.m.
5. Update on Non-compliance Decision and Meeting with the Secretary Of Commerce (*D. Grout*) 9:45 a.m.
6. Review Risk and Uncertainty Workgroup Progress (*J. McNamee*) 10:05 a.m.
7. Discuss Recommendation from the Atlantic Herring Section on New England Fishery Management Council Participation in Atlantic Herring Management (*T. Kerns*) **Possible Action** 10:20 a.m.
8. Discuss Non-Compliance in the Charter and Party Boat Sector (*T. Kerns*) 10:30 a.m.
9. Review White Paper from the Climate Change Working Group (*T. Kerns*) 10:40 a.m.
10. Standing Committee Reports 10:55 a.m.
  - Habitat (*L. Havel*)
  - Atlantic Coastal Fish Habitat Partnership (*L. Havel*)
  - Law Enforcement (*M. Robson*)
11. Discuss the Utility of Reporting Species Technical Committees Assignments (*S. Madsen*) 11:05 a.m.
12. Review and Consider Committee on Economics and Social Sciences' (CESS) 11:10 a.m.

The meeting will be held at the Waterside Marriott Hotel, 235 East Main Street, Norfolk VA; 757.627.4200

Recommendation on the ISFMP Charter Guidance for CESS Membership  
(*S. Madsen*) **Final Action**

13. Review and Consider Approval of the Assessment Schedule (*T. Kerns*) **Action** 11:15 a.m.
  - Changes to the Shad and Weakfish Assessment Timeline
14. Review Non-compliance Findings, If Necessary 11:20 a.m.
15. Other Business/Adjourn 11:25/11:30 a.m.

The meeting will be held at the Waterside Marriott Hotel, 235 East Main Street, Norfolk VA; 757.627.4200

*Vision: Sustainably Managing Atlantic Coastal Fisheries*

# MEETING OVERVIEW

**ISFMP Policy Board Meeting**  
**Thursday October 19, 2017**  
**9:30-11:30 a.m.**  
**Norfolk, Virginia**

Chair: Doug Grout (NH) Assumed Chairmanship: 10/15	Vice Chair: Jim Gilmore (NY)	Previous Board Meeting: August 3, 2017
Voting Members: ME, NH, MA, RI, CT, NY, NJ, PA, DE, MD, DC, PRFC, VA, NC, SC, GA, FL, NMFS, USFWS (19 votes)		

## 2. Board Consent

- Approval of Agenda
- Approval of Proceedings from August 3, 2017

**3. Public Comment** – At the beginning of the meeting public comment will be taken on items not on the agenda. Individuals that wish to speak at this time must sign-in at the beginning of the meeting. For agenda items that have already gone out for public hearing and/or have had a public comment period that has closed, the Board Chair may determine that additional public comment will not provide additional information. In this circumstance the Chair will not allow additional public comment on an issue. For agenda items that the public has not had a chance to provide input, the Board Chair may allow limited opportunity for comment. The Board Chair has the discretion to limit the number of speakers and/or the length of each comment.

<b>4. Executive Committee Report (9:40-9:45 a.m.)</b>
<b>Background</b> <ul style="list-style-type: none"><li>• The Executive Committee will meet on October 19, 2017</li></ul>
<b>Presentations</b> <ul style="list-style-type: none"><li>• D. Grout will provide an update of the two meetings</li></ul>
<b>Board action for consideration at this meeting</b> <ul style="list-style-type: none"><li>• none</li></ul>

<b>5. Update on Non-compliance Decision and Meeting with the Secretary of Commerce (9:45-10:05 a.m.)</b>
<b>Background</b> <ul style="list-style-type: none"><li>• The Commission sent a letter to the Secretary of Commerce requesting additional information on the decision to not find New Jersey out of compliance with Addendum XXVIII to the Summer Flounder, Scup, and Back Sea FMP. The Commission also requested a meeting with the Secretary to discuss the Non-Compliance process.</li><li>• The Commission received two memos and one letter from NOAA and the Secretary <b>(Briefing Materials)</b></li></ul>
<b>Presentations</b> <ul style="list-style-type: none"><li>• None</li></ul>

**Board discussion for consideration at this meeting**

- Discuss next steps

**6. Review Risk and Uncertainty Workgroup Progress (10:05-10:20 a.m.)****Background**

- Previously, the Risk and Uncertainty Policy Workgroup presented a draft Commission Risk and Uncertainty Policy and were advised by the Board to continue development.
- The Risk and Uncertainty Policy Workgroup was tasked last Annual Meeting with creating a Workshop to walkthrough the Policy using striped bass as an example. **(Supplemental Materials)**

**Presentations**

- J. McNamee will present the progress to-date the workgroup has made.

**Board actions for consideration at this meeting**

- None

**7. Discuss Recommendation from the Atlantic Herring Section on New England Fishery Management Council Participation in the Atlantic Herring Management (10:20-10:30 a.m.)****Possible Action****Background**

- The NEFMC has requested to participate on the Atlantic Herring Section. The Herring FMP is a complimentary FMP with the NEFMC.
- The Charter, as it is written, does not allow for Council participation by invitation on Sections. This is only a provision for Boards.
- The Policy Board tasked the Herring Section to discuss the issue and bring a recommendation back to the Board.

**Presentations**

- R. White will provide the recommendation from the Herring Section.

**Board actions for consideration at this meeting**

- Determine how the NEFMC should be included in the Commission's management of Atlantic Herring.

**8. Discuss Non-compliance in the Charter and Party Boat Sector (9:10-9:20 a.m.)****Background**

- Recently there have been violations in the for-hire sector. In some states the Captain of the vessel is not held accountable when anglers on the vessel do not follow fishery regulations.
- Some states have set regulations to incentivize Captains to follow regulations; for example
- *Liability for Violations Onboard For-hire Recreational Vessels. With respect to recreational for-hire fishing operations permitted: Permit Requirements Applicable to For-hire Vessels, an individual patron, as well as the named for-hire permit holder or for-hire vessel operator, may each be held liable for any violations of recreational size, possession or daily bag limits established that are attributable to the patron fishing onboard the for-hire recreational fishing vessel. In enforcing this provision,*

*law enforcement officers may exercise their discretion on whether to cite the named for-hire permit holder or for-hire vessel operator for such violations in instances where the best industry practices required: Permit Requirements Applicable to For-hire Vessels have been used on the for-hire vessel.*

**Presentations**

- None

**Board action for consideration at this meeting**

- Discuss ways to improve compliance within the for-hire fleet

**9. Review White Paper from the Climate Change Working Group (10:40-10:55 a.m.)**

**Background**

- The Climate Change Work Group was tasked with developing science, policy and management strategies to assist the Commission with adapting its management to changes in species abundance and distribution resulting from climate change impacts.
- In fall of 2016 the Work group met via conference call to brainstorm how to address the Policy Board task. In January 2017 the working group met to make recommendations to include in the white papers to address the Policy Boar task. In May the working group met to continue to develop drafts of science and policy white papers.

**Presentations**

- T. Kerns will present the Working Group White Paper.

**Board action for consideration at this meeting**

- None

**10. Standing Committee Reports (9:40-9:55 a.m.)**

**Background**

- The Habitat Committee will meet on October 18.
- The Atlantic Coastal Fish Habitat Partnership will meet on October 16 and 17.
- The Law Enforcement Committee will meet on October 17 and 18.

**Presentations**

- An overview of Habitat Committee and ACFHP meetings will be presented by L. Havel and the LEC meeting will be presented by M. Robson.

**Board action for consideration at this meeting**

- None

**11. Discuss the Utility of Reporting Species Technical Committee Assignments (11:05-11:10 a.m.)**

**Background**

- The Assessment Science Committee(ASC) recommended the creation of an annual task list for each species, compiled annually by Commission staff and the Technical Committee (TC) and/or Stock Assessment Subcommittee (SAS) chairs.

<ul style="list-style-type: none"> <li>• The list will include all current tasks with timelines, assign an activity level for the committee, a committee overlap score based on membership overlap with other TC/SASs, as well as list TC and SAS members and their affiliations.</li> <li>• At the time of tasking a Committee, the Task List can be projected to help prioritize the task and assign a deadline.</li> </ul>
<b>Presentations</b> <ul style="list-style-type: none"> <li>• S. Madsen will review an example task list and discuss the Utility of the list.</li> </ul>
<b>Board action for consideration at this meeting</b> <ul style="list-style-type: none"> <li>• None</li> </ul>

<b>12. Review and Consider Approval of the Assessment Schedule (9:20-9:30 a.m.) Action</b>
<b>Background</b> <ul style="list-style-type: none"> <li>• The Committee on Economics and Social Sciences has been working to assign members to Commission-managed species in order to have more socioeconomic background and analyses integrated into management-change documents (e.g. amendments and addenda).</li> <li>• The CESS currently has many vacancies and would like to fill them to assist with gaps in species' coverage.</li> <li>• The CESS would like to request a relaxation of the membership requirements outlined in the ISFMP Charter to reach broader pool of volunteers. <b>(Briefing Materials)</b></li> </ul>
<b>Presentations</b> <ul style="list-style-type: none"> <li>• S. Madsen will review the language in the ISFMP Charter that outlines the CESS membership requirements and present suggested changes. <b>(Briefing Materials)</b></li> </ul>
<b>Board action for consideration at this meeting</b> <ul style="list-style-type: none"> <li>• Approve the stock assessment schedule</li> </ul>

<b>13. Review and Consider Approval of the Assessment Schedule (11:10-11: 15 a.m.) Action</b>
<b>Background</b> <ul style="list-style-type: none"> <li>• The Shad and River Herring Board will consider changes to the 2018 Shad stock assessment update at the Board meeting on October 17.</li> <li>• It is recommended the Weakfish benchmark be delayed until 2019 until after the new data from MRIP (calibrated data from the FES and APIS changes) is available.</li> </ul>
<b>Presentations</b> <ul style="list-style-type: none"> <li>• T. Kerns will present the changes to the assessments</li> </ul>
<b>Board action for consideration at this meeting</b> <ul style="list-style-type: none"> <li>• Approve changes to the assessment schedule</li> </ul>

**14. Review Non-Compliance Findings, if Necessary Action**

**15. Other Business**

**16. Adjourn**

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

**The Westin Alexandria  
Alexandria, Virginia  
August 3, 2017**

These minutes are draft and subject to approval by the ISFMP Policy Board  
The Board will review the minutes during its next meeting

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1. **Approval of Agenda by Consent** (Page 1).
2. **Approval of Proceedings of May 2017** by Consent (Page 1).
3. **Postponed Motion from Spring Meeting: Move to postpone the New Jersey Appeal of the Summer Flounder, Scup, and Black Sea Bass Addendum XXVIII until the Summer/August ISFMP Policy Board Meeting.** Motion made by Adam Nowalsky; seconded by Pat Keliher.
4. **Move to postpone the New Jersey appeal of the Summer flounder, Scup, and Black Sea Bass Addendum XXVIII indefinitely or until hell freezes over** (Page 11). Motion by Russ Allen; second by Dennis Abbott. Motion carried (Page 12).
5. **Motion to Adjourn** by consent (Page 26).

**ATTENDANCE**

**Board Members**

Pat Keliher, ME (AA)	Roy Miller, DE (GA)
Dennis Abbott, NH, proxy for Sen. Watters (LA)	John Clark, DE, proxy for D. Saveikis (AA)
Doug Grout, NH (AA)	Craig Pugh, DE, proxy for Rep. Carson (LA)
Ritchie White, NH (GA)	David Blazer, MD (AA)
Raymond Kane, MA (GA)	Rachel Dean, MD (GA)
Dan McKiernan, MA, proxy for D. Pierce (AA)	Ed O'Brien, MD, proxy for Del. Stein (LA)
Eric Reid, RI, proxy for Sen. Sosnowski (LA)	John Bull, VA (AA)
Jason McNamee, RI, proxy for J. Coit (AA)	Chris Batsavage, NC, proxy for B. Davis (AA)
Mark Alexander, CT (AA)	David Bush, NC, proxy for Rep. Steinburg (LA)
Lance Stewart, CT (GA)	Sen. Ronnie Cromer, SC (LA)
Sen. Craig Miner, CT (LA)	Spud Woodward, GA (AA)
James Gilmore, NY (AA)	Pat Geer, GA, proxy for Rep. Nimmer (LA)
Emerson Hasbrouck, NY (GA)	Rep. Thad Altman, FL (LA)
Russ Allen, NJ, proxy for L. Herrighty (AA)	Jim Estes, FL, proxy for J. McCawley (AA)
Tom Fote, NJ (GA)	Martin Gary, PRFC
Adam Nowalsky, NJ, proxy for Asm. Andrzejczak (LA)	Sherry White, USFWS
Andy Shiels, PA, proxy for J. Arway (AA)	Kelly Denit, NMFS

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

**Ex-Officio Members**

**Staff**

Bob Beal	Lisa Havel
Toni Kerns	Shanna Madsen
Mike Schmidtke	Katie Drew

**Guests**

John Bullard, NMFS	Molly Masterton, NRDC
Kelly Cates, NOAA	Nichola Meserve, MA DMF
Kiley Dancy, MAFMC	Matthew Moran, Ofc. of Rep. LoBiendo, DC
Jeff Deem, VMRC	Brandon Muffley, MAFMC
Donna Delem, State of NJ, DC	Mike Rogers, Ofc. of Rep. Pollard, DC
Matt Gates, CT DEEP	Ariana Spawn, Ofc. of Sen. Booker, DC
Zach Greenberg, PEW	Jack Travelstead, CCA
Arnold Leo, E. Hampton, NY	

The ISFMP Policy Board of the Atlantic States Marine Fisheries Commission convened in the Edison Ballroom of the Westin Hotel, Alexandria, Virginia, August 3, 2017, and was called to order at 8:06 o'clock a.m. by Chairman Douglas E. Grout.

#### **CALL TO ORDER**

CHAIRMAN DOUGLAS E. GROUT: Good morning everybody. If the Policy Board members could take their seats, welcome and we have an agenda before us.

#### **APPROVAL OF AGENDA**

CHAIRMAN GROUT: Are there any changes to this agenda or additions to the agenda that any member of the Policy Board would like to make? Seeing none; is there any objection to approving the agenda? The agenda is approved by unanimous consent.

#### **APPROVAL OF PROCEEDINGS**

CHAIRMAN GROUT: We also in our packets have proceedings from our May, 2017 meeting. Are there any edits or changes to that? Seeing none; is there any opposition to approving those proceedings? Seeing none; the proceedings are approved by unanimous consent. This is our opportunity on the agenda for public comment. Is there anybody in the public that has something that they would like to bring before the Policy Board that isn't already on the agenda?

#### **UPDATE FROM THE STATE DIRECTOR'S MEETING**

CHAIRMAN GROUT: Seeing none; we will move on to our next agenda item, which is me providing you an update on the State Director's Meeting and the Executive Committee. As you might expect, one of our largest and most involved discussion items at the State Director's meeting was the fluke out-of-compliance decision by the Secretary of Commerce. We had Sam Rauch and John Oliver there, as well as

the Regional Administrator John Bullard there; although Sam provided most of the feedback and input on our discussion.

One of Sam's major points about the decision as we questioned him was that the Commission needed a stronger justification for Criteria 2. That is one of the reasons, as you see in the letter, that they did not agree with our out of compliance finding. That is just for those of you who are not aware that a state's failure to implement and enforce the measures in the management plan, are necessary for the conservation of the fishery in question.

We had considerable debate about that. The other thing that was brought forward by Sam was despite the uncertainty about how effective New Jersey's measures would be; the Secretary felt that they were likely to be equivalent in total conservation. As you know, New Jersey used the criteria of total mortality, while in our plan we are using harvest mortality as a measure.

He also made it quite clear that each future noncompliance finding will be evaluated on its own merits. There is nothing new or some precedent that has been set here. Obviously since this is the first time that a Secretary of Commerce has not agreed with a Commission's out of compliance finding recommendation, the Commission was very concerned that this was precedent setting. But he made it very clear that any future noncompliance findings will be evaluated on its own merits. That's essentially the discussion we had on fluke; and I'll tell you in my Executive Committee report. I'm going to provide you with an update of what the Executive Committee is making as a recommendation for further action on this. For now I'm going to go into some of the other things on the State Directors reports.

We had a discussion about ASMFC and NOAA Fisheries budget priorities. Typically our high priorities for budgets, and this is one of the main reasons we have this annual meeting with

NOAA Fisheries is to provide them with our priorities; are the Commission and Council line item budget, SEAMAP/NEMAP funding, ACCSP funding, Saltonstall-Kennedy funds, as well as IJ and Rec data collection funds.

For those of you who are unaware, last year there was an increase in the Council and Commission line item budget; and the Commission received roughly \$171,000.00 increase. We allocated it to state ACA programs. This is the first increase we've had in nearly ten years; and so we were very appreciative of that and we have been working over the past year to try and get some kind of an increase.

For your information, in the Presidents FY18 budget, he has put that line back to 2016 levels. The House has put forward a proposal to level fund at FY17 funding levels; which was what we just discussed. The Senate has a 1.6 million dollar increase to that line item for 2018 over the 2017 levels.

There is also some direction in that all of that increase should be directed to the international and interstate fisheries commissions. Obviously we're still at the beginning stages of the budget; but that's where we're at right now with our Council and Commission line item. NEMAP funding, we had a discussion about increasing shortfalls for both the NEMAP survey in the Mid-Atlantic and the Maine/New Hampshire trawl survey.

The ultimate, we finished discussion on this with the intent that there is going to be a NEMAP Summit this fall to develop plans for filling the funding gap or if we can't find funds to fill the gaps, to adjust the surveys to account for current funding levels. When we discussed SEAMAP funding, an issue was brought up about that there is a potential that NOAA Fisheries is currently evaluating whether they can eliminate the M and A fees, these are the administration fees that are assessed at the Regional level and at Headquarters level.

They are looking at the possibility of not having to have some of those taxes assessed – excuse me for using the word tax, Kelly – to help provide more funds to some of our grants; and this may help out SEAMAP. Also we had a discussion about ACCSP and Fisheries Information Network funding. One thing in the Senates current appropriations bill, it specifically allocates 22.5 million dollars in Fisheries Information Network funding.

We're going to be looking as what is that compared to previous years. Nobody at the meeting was quite clear on how that compared to previous years; but it was something that was specific wording in the Senate's language. For Saltonstall-Kennedy funds, the Commission was asked; we had a discussion with Sam about that and how we can better provide input into this.

It was decided the Commission would continue to provide a working list of priorities for the National Program portion of the funds. That is what we had discussion on for funding. Then we went on to have sort of a discussion about how implementation of APAIS is going with the states. Generally there has been a positive response. The states in general feel that things have been going well, and there have been some positive benefits to that. There have been some minor hiccups, as you would expect when a new entity takes over conducting a survey. Another thing that was brought forward by a number of states is there seems to be increased resistance on the part of the charterboat sector to participate in the surveys in some states.

We also received an update from the National Marine Fisheries Service on the Fishing Effort Survey and APAIS calibration and transition. As I think many of you know, we're transitioning to a new effort survey based on the license frame, which I think many of us believe will be an improvement over the coastal household telephone survey.

Some of the preliminary results from this are indicating that fishing effort in the private boat and the shore fishery are somewhere between two and six times higher than what the coastal household telephone survey is. As a result there is going to be a need to calibrate historical data to the new effort system.

They are going through a peer review, they just had a peer review in, I think it was May or June, of it. There is going to be a peer review of the final calibration and the re-estimation should be up and running sometime in 2018. Next there was a discussion on benchmark assessments versus operational assessments, primarily on how to incorporate new scientific information into benchmark assessments.

In addition we had a discussion on observer coverage requirements for small vessels with state permits; with or without federal permits. There is a concern that was expressed by one of our state directors that there is excess coverage burden going on; because these day boat trips are easier for the contractors to actually get their required samples on it.

They seem to be spending more time interviewing these or going out on sea sampling trips or observer trips on these smaller boats. Finally, the Regional Administrator, John Bullard, brought forward a request for ASMFC to potentially start considering tribal representation on ASMFC, or at the Council level.

Obviously both of those could be a heavy lift, because they will require an act of Congress to change the makeup or either ASMFC or the Council's to include tribal representation. That is my report from our meeting with NOAA Fisheries. Are there any questions on any of those items? Eric.

MR. ERIC REID: When you were speaking about the NEMAP funding, you said something about a summit this fall. What is that going to look like, Mr. Chairman?

CHAIRMAN GROUT: Toni, can you provide or Bob, can you provide a description of what that summit is going to be?

EXECUTIVE DIRECTOR ROBERT E. BEAL: Sure. Yes Eric, we haven't planned it yet. But the idea is it's going to be bringing together the NEMAP Board and a number of the NEMAP technical groups that look at the structure of the survey and all the details of how it's conducted. In addition to just reviewing how it's going, they are going to try to answer two questions.

One is what additional sources of money can we find to round out the needs of the survey? The second question would be if we can't find additional funds, what do we do? How do we make up for that shortfall in the way the survey is conducted? Do we shrink the range of the survey? Do we keep the same range but reduce stations?

Whatever it might be, do we adjust the sort of post processing and things that are done at VIMS? All those things are probably fair game to talk about. The idea is getting everybody involved with NEMAP in the same room, and sort of talking about how it's going. You know NEMAP is at about a ten year maturity level.

That's where a lot of the assessments and stock assessment folks feel that the time series is long enough to incorporate that data into assessments. We had planned this summit prior to the budget shortfalls. We were going to focus on the technical aspects; but given that we had these budget issues, we're going to roll that into the same meeting now.

CHAIRMAN GROUT: Follow up?

MR. REID: It's more of a point than anything else. I'm sure you're aware that NEMAP goes in areas where the Bigelow can't go. They tend to catch more of the young of the year and very young fish; which are critical to the data. Anything that can be done to maintain the survey range is critical; not only to the NEMAP

itself but to the industry going forward. I strongly suggest we figure out a way to get them fully funded, and not just for one year for some amount of time.

EXECUTIVE DIRECTOR BEAL: Just as a quick follow up. You know Eric, you're exactly right. We had a lot of conversation about that on Monday. There are the state surveys that are kind of right up against the beach, there is the Bigelow that's way offshore, and NEMAP is that sort of no-man zone in the middle.

How do we make sure that's still covered? Then the other thing we talked about on NEMAP, which is unique to NEMAP, is the fact that it's on an industry boat by a trusted industry captain. A lot of the commercial side especially trusts that data and feels that is good data that needs to go in these assessments, so keeping all those aspects in consideration, we need to find a way to keep it going.

CHAIRMAN GROUT: Anything else on this report; any questions? Bob.

EXECUTIVE DIRECTOR BEAL: Sorry, don't mean to be talking the whole time. Back on the New Jersey fluke issue. A couple commissioners have asked me if we've gotten a response from the letter that we sent to the Secretary. As I think everyone knows, ASMFC sent a letter to the Secretary asking or expressing the concerns that ASMFC had over the decision on summer flounder.

The letter ultimately asked for additional information on what went into the decision by the Secretary to agree with New Jersey's position that their conservation equivalency was essentially close enough to what the Commission had done. I just want to let everyone know, we have not received a response to that letter. Sam Rauch indicated on Monday that if and when they put together a response, we may actually already have a lot of the information. He said since NOAA Fisheries has shared the documentation that New Jersey

provided. That was a big part of their decision. Sam also said they've asked the Secretary if there is any other documentation that the Secretary would like to provide to ASMFC, and they're still waiting for a response from the Secretary. We haven't received a response yet, and if we do we'll share it as soon as we do.

#### **UPDATE FROM EXECUTIVE COMMITTEE MEETING**

CHAIRMAN GROUT: Is there anything else? Okay the next thing is the Executive Committee met on Tuesday morning. Our three main agenda items was the Council/Commission line item and NOAA budget; again, the Secretary's decision regarding fluke and Bob Beal's contract. Under the Commission line item and NOAA budget, our continued goal is to get back to the original 28/72 split; where Commissions will get 28 percent of that line.

It got 28 percent of that line when we were first combined. It's been eroding over the past ten years, because of increases to the Council; any of the increases to that line have gone to the Councils over those ten years. The Executive Committee as I said, his goal is to get back to that 28 percent by whatever allocation direction we can provide.

I had mentioned in my previous report that the Senate bill has a specific language to only allocate any increase to the international and the three interstate fisheries commissions. The Executive Committee had previously supported having a 50/50 split of any increase; until we got back up to 28 percent, and after that any increase would be a proportional allocation of any change in the amount.

We're going to continue to go forward with that as our plan for trying to allocate any increase in this particular line. Also we had again a long and thorough discussion, as particularly the South Atlantic Board was well aware of, since we were over an hour late, about the

Secretary's decision on New Jersey's fluke compliance.

We had a discussion about lessons learned, and then we went into a closed session to decide what our next actions would be; what should we do at this point? The Executive Committee is recommending that the Commission leadership request a face-to-face meeting with the Secretary; with the goal of protecting the process.

In addition, the question needs to be put forward both by the Commission here and to the Secretary. Are the states via the Commission still the best entity to manage interstate fisheries? We would like to come forward with a specific ask to develop an MOA to better define the process that goes on between the initial out-of-compliance finding submittal by ASMFC, and when the Secretary's decision is made.

Specifically we're going to seek to insert the opportunity for ASMFC to also meet, either during the meeting that the states are afforded that a state that's been found out of compliance, either during that meeting or after that meeting. We felt there was a concern by the Executive Committee that after the state had had their opportunity to make their case before the Secretary of Commerce that we were not given the opportunity to more fully explain the reason for our decision.

We feel that that would be an important point in the future to have that opportunity. Also at this meeting, and in the conference call that the Executive Committee had on July 20, the Commission should be aware that we also discussed the possibility of taking legal action. But in both those meetings we chose other actions, first of all the letter and then this meeting. We chose other actions at this time. Finally, our Executive Director's contract will be up at the end of this year.

I made a recommendation to the Executive Committee that Bob's contract be extended for another five years. We all think he's done a fantastic job. He has consistently had positive performance reviews, and we're looking forward to having him on for at least another five years; and the Executive Committee agreed with that. Are there any questions about the Executive Committee report? Yes, Jim.

MR. JAMES J. GILMORE, JR.: I just wanted to make one comment, and this goes back to the noncompliance thing. In the meeting, both the Executive Committee and with the meeting on Monday was relative to that justification that the Commission did. I think it really hasn't been stated, but I personally and I hope all of us, disagree with that completely.

What I really wanted to state was that I think of all the justifications I've seen in my career that was one of the strongest ones in any part of species management I've ever seen. I think the staff for the Commission and the states, even the federal government that were involved did an exemplary job on that.

You shouldn't feel that there was any deficiency in what was done through that whole process. I just wanted to make sure that I don't think that is really what's going on here. Again, I think the justification was well done; and we'll get into hopefully that meeting and find out a little bit more about what really happened with that decision.

CHAIRMAN GROUT: Yes I agree with that and in fact the point was made to Sam that we do strongly disagree with his feedback that we could have done a better job of making an argument on the compliance determination Criteria Number 2. If you've all looked at the Technical Committee's report, it is a very strong justification; and we made that point to him, Ritchie.

MR. G. RITCHIE WHITE: I agree with your comments and Jim's. In thinking about this,

because we're now in a time when a decision like this can be made politically and not based on science, the people sitting around this table have to make a decision going forward whether this method of fisheries management is the best method; and whether we want to preserve it or not.

I think we have to take the Secretary of Commerce out of our process, and what I mean by that is that we have to not have out of compliance findings. The states have to think long and hard before entering into this, and thinking about what I believe will be a short-term gain for a state that may not be a long-term gain. I think it's up to us to make sure that this system is solid and goes forward, and that we don't use this change in political decisions to advance what we might perceive as a short-term gain for our individual state.

CHAIRMAN GROUT: Tom Fote.

MR. THOMAS P. FOTE: Once Ritchie opened up the box about political decisions. You know there have been a lot of political decisions made on summer flounder; and New Jersey has been the losing end of those political decisions over the last couple of years. That had a lot to do with it. I also think that our appeal process is not working. As a matter of fact two or three states wanted to appeal and they realized that it's an appeal process they can't win, so they didn't even bother doing it.

We truthfully had never put the formal request – appeal – had a hearing on it at the Policy Committee, because some of it was by the time you went through the document we sent in, the points that we thought were important, the same one you thought was important when you said to the Secretary of Commerce, we're completely ignored and we weren't even allowed to discuss those points.

If you're going to have an appeal process and people are going to buy into that; because that is the way it should have happened, it needs to

be more thorough and it needs to look more at the states; and it shouldn't be a small decision by a couple of individuals, whether the whole appeal goes through or not.

But yes, the summer flounder decision, when we were forced in a region that we did not want to go, never supported that region, and when two other states opted out just by saying on the telephone call; we don't want to be in a region together, and they were allowed to do that when we were not. It's political.

I mean New Jersey has the good fortune of being in the middle, because we're on the Mason/Dixon line, it runs through New Jersey. We get thrown back and forth as a ball sometimes, for the benefit of the people above us and people below us. Also, because of our historical fishery, and we get shots at these fish as they go back and forth in their migratory pattern.

We've had some of the biggest catches in that; that's historical catches; you know the same way Virginia uses that on menhaden. It's the same way we should be able to do that; and people want to go after those historical decisions. They find more ways of getting around it or those historical landings.

If we have felt, I think New Jersey had gotten more of an appeal process, gone through the proper channels and actually listened. I mean you can justify that we were out of compliance, but when you look to the conservation that was very iffy, whether we were doing more conservation or not. You should have given us a chance and that would have happened.

We tried at the Technical Committee, we tried at the Board. We tried at the appeal process, and we weren't getting a fair shake as we saw it, all three. I agree with Ritchie, we need to get the politics out of here. We need to be fair. When the states feel they're getting a fair share, and that's historically what we've done. We've listened to, whether it was Virginia,

whether it was New York. How do we basically enhance that? Sometimes it's just the figures.

We look at 2013 and I can pick out a number of examples when the Marine Recreational Survey we call MRIP now, has basically failed us. We get numbers like that from New York, numbers that New Jersey one year caught two-thirds of the recreational catch on weakfish; and we say those numbers are lousy, and they should be thrown out. If we were in business, if we were in any other field, they would look at the PSE on those numbers they would have thrown them out and said they are not verifiable. I know it's kind of long winded, but you know I felt strongly in what we did. I supported what we did, and I think it was the right thing. But the Commission needs to adjust how it does the appeal process, how it handles states; because we have gotten political in the last couple years. When states feel like they're not getting a fair and honest hearing, and they feel they are being politically picked on, then they are going to basically have to react.

CHAIRMAN GROUT: I have Dennis Abbott and Robert Boyles. Dennis.

MR. DENNIS ABBOTT: Monday when the Executive Committee met, during that conversation I noticed that Jason McNamee really was troubled by this decision. As we know, Jason is a great scientist; and I think he was responsible for putting together the technical justification for the noncompliance.

I know that he felt very bad about this. I could see it in his face. But, as far as getting a fair shake. I think that the administrative record would show that New Jersey did get a fair shake. It went through the complete Commission process. Ritchie White and I, Ritchie is a good guy and he takes me fishing now and then so that we can talk about these matters.

With each of us holding on to our striper rods, we talked about this and it became very clear

that the process, the Compact that we're dealing with was really being put in a bad place with this decision. Anyone that thinks this wasn't politics. If you can add up Christie, Trump and Ross and not come out with the fact that this wasn't a political decision, you've got blinders on.

In the end I think that the states really have to consider placing the Compact above their individual state issues. It may be difficult, as it was in this case difficult for Massachusetts and New York to go along with essentially what the federal government agency told us when we had to cut back on summer flounder catch.

It wasn't ASMFC really that came up with a 30 percent cut. It was the Feds that told us that. But we have to manage these species, because their health relies on the decisions that we make. But also, we can't allow for one sided decision making. Doug Grout alluded to that that they may have a conversation, and as I said during our Executive Committee meeting that we need more than a conversation, because the Secretary of Commerce sits there temporarily.

He may be there who knows, a week, a month, a year, four years or whatever. This could happen under another administration. But what did happen, really in my mind; and Ritchie and I spoke about it, really weakens the process that we're all engaged in and committed to. Also, I think that the process of conservation equivalency, I don't know if it needs another look, but we've generally when we've had conservation equivalency proposals offered.

They're generally, I don't know the percentages, but usually approved and rarely disapproved. Maybe in the future we have to ask the Technical Committee to be more detailed and provide clearer justification of noncompliance; when science is the issue as opposed to administrative issues.

But in this case, as Jim Gilmore stated a few minutes ago, he thought this was very

thorough. I'm sure Jason McNamee would tell you that they provided clear reasons for disallowing the noncompliance finding. I think on one side we have to do more, we have to do better. But the states really have to look at the big picture and look at the damage that was done. We can say that this is a one-issue or one-time thing. But it doesn't work that way. There are always precedents. Mark my words, I may not be around, but this will come up again, and now you have precedents. I'm concerned, and I think that at the end of the day it's very important that we place the Compact above all else.

CHAIRMAN GROUT: Robert Boyles.

MR. ROBERT H. BOYLES, JR.: Representative Abbott, thank you for what I would like to consider a great segue way to my remarks. Mr. Chairman, I think it's important that we recognize that the very constitution of this great nation holds matters of interstate commerce to be the purview of the Federal Government.

In the early 1940s when the country was engaged in some distractions around the globe, the Congress in its wisdom decided that there is a lot to be gained by states sitting in a body like this to cooperate, to commit to one another to work together on problems, challenges, and opportunities.

In 1993, the Congress established the Atlantic Coastal Act; that really put that idea, that concept, that ideal of interstate cooperation into what I would argue a more mature, modern, cooperative venue with both the carrot to encourage cooperation, as well as a stick to ensure cooperation once a decision had been made.

Clearly, South Carolina doesn't sit on the Summer Flounder Board, and so our interest in that particular management board may not be as great as other states. But I too share Representative Abbott's concerns about the efficacy of this institution as a place where we

can come together and work through problems, work through disagreements, and really provide a stable and a vigorous forum for discussions; to how to manage these great resources that we are blessed to have the privilege of being stewards of.

With that Mr. Chairman, I just would like to quote Dr. Franklin, who just before signing the Declaration of Independence remarked, as he concluded his comments, "We must indeed all hang together, or most assuredly we shall all hang separately." I think I speak for my colleagues in South Carolina that we're disappointed with what has brought us here.

But from our perspective, we remain committed to this Compact. We remain committed to each other, in terms of the belief that the states are the best place for these decisions to be made; and we will do our best to ensure that folks around here feel like they get a fair hearing. We are committed to continued cooperation.

CHAIRMAN GROUT: I have Roy Miller.

MR. ROY W. MILLER: Robert, I don't know if I can add to that eloquent presentation by you; but I have a practical suggestion for us to possibly consider. Having listened to Tom Fote's comments regarding the appeal process, and looking over the letter seeing who handled the appeal on behalf of the Commission. I'm wondering if we want to give consideration to adding a player or two or three to the appeal process, who are outside of the Commission process. In other words, not Commission members, not part of the Policy Board who originally voted on the compliance finding; and thereby giving a little bit of independent peer review, if you will, to future appeals process. I'm not saying go totally outside. Clearly we need Commission members; we need staff on that appeal process. But I'm just wondering if some fresh perspective from outside the Commission might give that appeals process a

little more objectivity in the eyes of those who maybe are on the negative side of that appeal.

CHAIRMAN GROUT: I'll just point out. I think that's a good discussion item, particularly in light of the fact that Commissioner Fote has suggested that we may need to relook at the appeals process that we have. I'll remind the Commission that we just recently revised our appeals process in the past two or three years; of which everybody on this Board at that time supported those revisions.

But I think if we find that something or if we feel that something still isn't perfect that it's an opportunity to move forward; and possibly look at this again in the future with your suggestion and any other suggestions that the Commissioners might have for revising our appeals process. Tom Fote.

MR. FOTE: I don't take going out of compliance lightly. As a matter of fact, I don't know who was sitting on the Board but Bob might have been here. Years ago because of my role as a legislative appointee on one of the Boards as a proxy, I voted New Jersey out of compliance. I took it seriously; and felt that they should put the regulation.

I caught a lot of heat from that back in my state; but that's what we did. Over the years we've basically gone out of compliance a few times, and automatically came right back into compliance as soon as we could. Part of the problem was we used to do striped bass by legislation; so it was always a long process.

One time we were supposed to get it done the state house flooded, and they had to postpone the whole vote on the thing; so it passed the date. I take it very seriously. But I also look at the way the law was written. The law was written for a particular purpose to basically help the Compact work, and it gave us a lot of power, an extreme lot of power to basically shut a state down by automatically going to the Secretary of Commerce.

But it also laid on the Secretary of Commerce to be the arbitrator sometimes, to look at what he thinks is the right move to make. I don't think the process failed us. They've supported us all the time. They've sent the letter to New Jersey every time they thought it. But this time they thought there was something valid with the arguments we made.

We should look at that as part of the system "working," not "not working." Because of all the noncompliance, as a matter of fact I've watched states say, well I can't say this out in public, but vote me out of compliance; because it forces me to do the right thing when I got back, and that's happened numerous times and we've done it, so it has worked.

To say the whole system is broken because of one instance where the Secretary of Commerce looks at an issue, felt that maybe it wasn't, with taking all the facts that were put out. You put a beautiful justification out, so did New Jersey. I think the system worked. The system before that needs to work a little better, and I thanked everybody. I support what Robert said and I support what Roy said. I mean I looked at it, I take it very seriously. We vote states out of compliance for specific reasons; but again we've got to look also when we vote them out. Just because they are not doing it, but it's not going to hurt the resource or it's not going to really affect anything; we need to take a chance once in a while, and thank you for your patience. I understand it's very hard.

It was hard for us. I mean I served this Commission off and on for 27 years. I don't take going out of compliance lightly, as I said, we've always got back into compliance as soon as we could; and I voted my state out of compliance when I had the opportunity. I'll leave it at that.

CHAIRMAN GROUT: Ray Kane.

MR. RAYMOND W. KANE: As you all know I'm a junior Commissioner here, but I sat in the

peanut gallery for years. I would like to start by commending Bob Beal and his staff and the Technical Committee. We've got nothing but good things from them over the years. I'm at a point sitting at the table; we can beat this up the rest of the day.

Decisions have been made. A lot of people aren't happy with it or we can live for today and tomorrow. I certainly hope because of this outcome, this previous outcome that we don't become hypercritical and paranoid in future FMPs.

CHAIRMAN GROUT: Adam.

MR. ADAM NOWALSKY: One of the biggest criticisms I've heard of the Secretary's decision is that somehow there is a sense that an individual state won here. We all lost; everyone around this table! I would make the argument NOAA Fisheries and even the Secretary of Commerce for being forced to get involved in this, and New Jersey lost.

For the first year in 18 years, I'm not running my own vessel this year. It didn't matter if it was three fish at 19 inches or three fish at 18 inches, with almost a month less season. Neither of those regulations served the public; and worse than that when we put forth a proposal that acknowledges that it kills more fish through discards than harvest. We are certainly not serving the resource we claim so ardently to protect.

The concerns about wanting to protect the process that's all well and good, when the process is working. But when it comes to recreational fisheries management, the process is not working. It's not, and it's unfortunate that it's had to come to this, and I certainly understand a lot of the criticisms are coming from those states that have not been as impacted by the recreational problems with data collection.

Using FMP processes that were put in place not to manage resources at very high levels of abundance, but that were put in place at a time solely for rebuilding purposes; and that purpose only. For those that say you're concerned about the process. You should be concerned about the process.

But sometimes it's okay to go ahead, have those concerns, have a third party step in; which is essentially what happened in this case, say take another look at what we're doing. I hope; I truly hope that we can use this as a stepping stone to something better. I sincerely hope that we can look at the information that was provided by the Secretary, and use that as a building block in making our appeals process stronger. Most importantly, recognizing that second element of the noncompliance findings, are the measures that we seek to enforce truly about conservation of the resource?

CHAIRMAN GROUT: Jay McNamee.

MR. JASON McNAMEE: I'm going to work off one of the comments that Adam just made, and it was a reference to reviewing information from the Secretary. What became very apparent to me during this past couple of days is there is nothing to review. We had a really rigorous process. New Jersey put forward a fair effort.

I appreciate Mr. Abbott's comments earlier, and I was on that technical review; but so were a lot of other people. Your state scientists, NOAA Fisheries scientists, Mid-Atlantic staff, it was not a single person it was a full technical review. We reviewed their work. We offered our advice on that work; and what happened subsequent to that is there was a process that occurred with the Secretary that second guessed what that technical body did, without any evidence, any information. There is nothing to review. I was told that bluntly.

That is the biggest issue with all of this, and my view is that process that occurred, it wasn't

much of a process after it left our table. I don't understand. I don't feel we can let that stand. I appreciate the idea by the Executive Committee to meet with the Secretary; because I think we really need to emphasize this point that we put forward a technical review, and were offered nothing in return as to why that technical review was deemed insufficient.

CHAIRMAN GROUT: Any other comments on this issue? Okay it was a good discussion. I do appreciate all the comments that our Commissioners have put forward here. This is obviously a very difficult issue. I look forward to working with all of you to continue to cooperatively manage our interstate fisheries for the benefit of the resource and our constituents here. That is what I have for Agenda Item Number 4. Oh Dan, go ahead one more?

MR. DAN McKIERNAN: Quick question, Doug. You had mentioned earlier that there was going to be a redraft of an MOU about noncompliance. Is that a task coming out of this discussion?

CHAIRMAN GROUT: We are going to request a meeting with the Secretary, a face-to-face meeting with Commission leadership and the Secretary; and one of our asks of him is to develop an MOA with the Secretary and NOAA Fishery and the Commission, to try and better define the process between when the Commission sends a letter of noncompliance to him, and when he makes his final decision.

One of the things that we would like to get in that is an opportunity, either in conjunction with or following when the state, who is by the ACA Act provided the opportunity to make their case before the Secretary that the Commission also be afforded that same opportunity.

MR. McKIERNAN: Who would be the signatories to that MOA?

CHAIRMAN GROUT: ASMFC; and hopefully the Secretary of Commerce.

MR. McKIERNAN: The head of NOAA or NMFS rather?

#### **PUBLIC COMMENT**

CHAIRMAN GROUT: Maybe even higher. I'll take one very brief comment. Can you go down to the public microphone?

MR. ARNOLD LEO: I'll just do it here. Arnold Leo; I represent the fishing industry of the town of East Hampton, Long Island. I just think it's worth hearing a word from the gathering mob that in New York already at one of our fisheries meetings, a very large group of fishermen are saying to the DEC on the tautog fishery, where there is a proposed 50 percent reduction in landings in Long Island Sound.

Well, why don't you just do what New Jersey did, go out of compliance and see what happens. My point is that this action by the Secretary of Commerce is definitely going to make it hard for the credibility of the environmental agencies in the states; you know to follow a kind of rational process of fishery management.

#### **REVIEW AND CONSIDER NEW JERSEY APPEAL OF ADDENDUM XXVIII POSTPONED MOTION**

CHAIRMAN GROUT: Okay anything else from the Board? All right our next agenda item was to take up a postponed motion that was moved concerning the appeal process that New Jersey put forward. Again, this had been that New Jersey's made a motion that was seconded by Pat Keliher to postpone consideration of New Jersey's appeal of Summer Flounder, Scup, and Black Sea Bass Addendum XXVIII until this particular Policy Board meeting. We need to somehow dispense with this. Russ.

MR. RUSS ALLEN: You have no idea how much I would like to dispense of this. **I would like to move to postpone the New Jersey appeal of**

**the Summer Flounder, Scup and Black Sea Bass Addendum XXVIII indefinitely or until hell freezes over.**

CHAIRMAN GROUT: Is there a second to that motion? Dennis Abbott. Don't forget hell freezes over in there. Is there any discussion on this motion? Seeing none; is there any objection to approving this motion? **Seeing none; the motion is approved by unanimous consent.** The next agenda item is Discuss the Secretary of Commerce Decision Regarding New Jersey's Summer Flounder Recreational Measures.

We just had a fairly lengthy and I think very fruitful discussion on this. Is there anybody that would like to add something to that discussion that we had? Seeing none; we'll move on to Agenda Item Number 7, Review Annual Performance of the Stocks.

#### **REVIEW ANNUAL PERFORMANCE OF THE STOCKS**

MS. TONI KERNS: As a part of our strategic planning process through 2018, we reviewed the performance of the stocks each year; also within our action plan, and we have been doing this since 2009. Really the goal of this here is to validate the status of each of the stocks, and look at the rate of progress that they're making, and if the Policy Board is not pleased with the process then to identify corrective actions and to give advice back to the Boards.

Each of the species is reviewed and has for the species that are of concern, depleted, or unknown, the document talks about how the Boards have been following the technical advice. That is where the advice back to the management boards from the Policy Board would come into play. In addition to feedback, we also can use this information to help guide staff as we create the 2018 action plan. We have five categories; rebuild/sustainable, recovering/rebuilding, concerned, depleted, and unknown. For this year black sea bass was

added to the rebuilt/sustainable category after the release of the stock assessment last year; and red drum and tautog for the Mass/Rhode Island proportion region of tautog were pulled into the recovering/rebuilding.

In the document there are tables that give the status of these rebuild/sustainable and the recovering/rebuilding stocks, and talks about different little caveats of the assessment, as well as when the next assessment will be. I'm going to go into some of the information on species of concern. For horseshoe crab, we are still looking for dedicated funding for the coastwide survey, or surveys of a broader regional geographical region.

Thanks to a lot of efforts by LoBiondo and Pallone's office, for 2017 we have secured funding for the survey. That funding was done through the SK funds, and NOAA dedicated the Commission's SK funds for the horseshoe crab survey. The 2018, both House and Senate also have the same direction for NOAA to find funds for the horseshoe crab survey as well, this was again thanks to LoBiondo and Pallone's office for that work on that.

Horseshoe crab is still looking to develop biological reference points; as well as a mechanism to include biomedical data and mortality estimates into regional assessments, without compromising data confidentiality. As the Board knows, the 2018 assessment that we will do is a regional assessment; but because of the confidentiality of the biomedical data, we're going to have to do that assessment pretty much behind closed doors in its entirety.

Then when we report out to the Management Board, it will have to be in trends and in code for a lot of it; because we won't be able to give the results, due to that confidentiality as well. For summer flounder, the retrospective patterns are evident in the assessment; and have substantial implications in the reliability of the model projections.

The stock is not overfished, but overfishing is occurring; and we have been seeing declines in the SSB for the past couple of years. We have not had a good recruitment class since 2010. In 2017 the probability of overfishing is higher than what is in the Mid-Atlantic Council's risk management policy.

It was also higher in 2016, and the results of the 2016 recreational harvest were about 114 percent of their recreational harvest limit. There is concern with the summer flounder stock; and the fact that we've been setting recreational measures that likely will exceed the RHL. Additional species of concerns are coastal sharks, as well as winter flounder.

For winter flounder, there will be a GARM assessment that will include winter flounder. The groundfish stocks will all be looked at through the Northeast Fisheries Science Center in the next coming year, I believe, and Gulf of Maine will be looked at. Previously the assessment is based on a swept area, estimated biomass, and this assessment was last completed in 2014.

The Commission's Board has been maintaining the same management measures since 2015 for the Gulf of Maine winter flounder stock. For depleted species, southern New England lobster. It's depleted, but overfishing is not occurring. The abundance is at 42 percent of the threshold, and the exploitation rate is below the threshold. Estimates of recruitment are near zero, or the lowest on record. The TC has advised the Board to use output controls, yet the Board continues to use input measures to manage the stock. The TC has advised 50 to 75 percent reductions in each of the LCMAs within southern New England, and previously the Board had approved a 10 percent reduction. Then at this past meeting the Board did not take any action to increase egg production; where at the previous meeting the Board had agreed to do a 5 percent increase. For northern shrimp, due to failed recruitment the stock is not expected to recover until at least this year;

although indications from the survey is that it will be further out from this year.

The Section has been implementing a moratorium since 2014; and is in the process of doing an amendment that looks at state quota. The last year we have seen a small uptick in information for a shrimp-survey abundance. We're hoping that that will be continued positive increase trends; but it is a very small uptick in response to these many years of moratorium.

For tautog, the 2016 assessment update indicates that the Long Island Sound and New Jersey/New York Bight regions are overfishing. The Long Island Sound, New York/New Jersey Bight and DelMarVa regions are overfished. The assessment proposed new reference points for each of these regions; and recommended that the Board manage the stock on a regional basis.

The Board initiated Draft Amendment 1, which is currently ongoing, which does consider regional management, regional reference points, and additional measures including a tagging program for tautog. For winter flounder, southern New England, the stock is at 23 percent of the SSB target. There have been some modest increases over the last decade; but the stock has remained at approximately a quarter of the target since the early 2000s.

Since 1981, recruitment has been declining, 2013 had been the lowest in the time series; where it was approximately 4 percent of the estimated recruitment in 1981, which was the highest in the time series. The 2014 recruitment estimate increased slightly, and the overall stock productivity yet still continues to decline.

In 2014 NOAA Fisheries extended the rebuilding timeframe to 2023; to allow for increased fishing opportunities while the stock rebuilt. Following the TCs advice, the Board maintained a 50 pound trip limit for non-federally-

permitted-commercial vessels for the 2017 fishery. NOAA Fisheries has reduced the state water subcomponent of the stock, so the state-water catch and the total stock-wide catch limit; but the allowable harvest levels are still very high, yet the actual harvest remains quite low.

The Board also had extended the recreational season from March 1st through December 31st, to increase fishing opportunities based on the species availability. Additional species that are depleted are American eel. We haven't had a recent stock assessment for eel in a while; so I wasn't going to repeat what I've been telling you for the past couple of years for all of these species.

For eel the assessment will be coming in 2018. The 2016 harvest was just over the coastwide cap. The Eel Board is going to have a working group get together to discuss how to manage the yellow eel landings; as well as looking at the quota for Maine for glass eel, and report back to the Board at the annual meeting.

For American shad, as we heard yesterday the TC does have some concerns about how to do a shad update; based on the issues that we had during the river herring assessment update. Because the significant portion of these assessments that are qualitative and the amount of time that has lapsed between the two assessments, and the turnover that we've had of folks on the Assessment Committee; it's hard to have the continuity of judgments from one assessment to the next.

In addition for shad, there have been some changes in studies on whether or not scales are appropriate for aging; which impacts some of the information coming out of the assessment. For shad, we're going to have the TC as well as the Assessment Science Committee look at that and figure out what's the best way forward for an assessment for shad; to provide some sound, stable management advice to the Management Board, and get back to you at the annual meeting.

We just heard about the river herring assessment update; so I'm not going to repeat that from what you heard yesterday. Then for weakfish, we have a weakfish assessment coming up in 2018. Landings have remained similar over the past couple years; so hopefully we'll get some new information out of this assessment update.

Then unknown species, for Jonah crab, the Jonah crab landings have increased six-fold since the early 2000s, with about 13.5 million pounds of Jonah crab landed in 2015. The status of the Jonah crab resource is unknown; and there is currently no data on juvenile recruitment. There are currently ongoing studies to look at age at maturity for U.S. waters in Jonah crab.

A lot of those efforts are being done by the state of Massachusetts. We are also at the same time investigating the annual migration patterns of Jonah crab. All of this information will be necessary in order to conduct a stock assessment. Once we have enough information then we will do our first stock assessment of Jonah crab. Additional species of unknown are Atlantic croaker, sturgeon, spot, and spotted sea trout. For both Atlantic croaker and spot, we had recent assessments that did not pass peer review.

But the Peer Review Panel felt that the status of the stock is doing all right, based on the trends and the indices. Although we did get information on Tuesday that we should look at the traffic light approach, which we use indexes to see how the stock is doing outside of the assessment time periods. We are looking to enhance those traffic light approaches, and will be bringing information back to the Board once that's been completed, and that is my full report.

CHAIRMAN GROUT: Any questions for Toni on this report? John Clark.

MR. JOHN CLARK: Thank you, Toni. This is kind of tangential to that; but you mentioned that for the horseshoe crab that was SK funded this year, but that's coming out of money that ASMFC would have gotten in SK that could go to other projects? I mean I'm glad the project is getting funded, but we've also up and down the coast have benefited from SK funding through ASMFC for other projects, like the striped bass tagging. I was just curious as to how the whole funding mechanism works there.

MS. KERNS: For this year NOAA determined and told us we would use our SK money for horseshoe crab. Often in the years past they've said you have \$500,000.00; decide how you want to use it. But this year we were told to use it for horseshoe crab. It was \$200,000.00.

CHAIRMAN GROUT: Chris Batsavage.

MR. CHRIS BATSAVAGE: Toni, for species that had a stock status from a previous accepted assessment, but then the next assessment doesn't pass peer review, does the status of that species switch to unknown at that point?

MS. KERNS: That is what we have done for most of the species, yes.

CHAIRMAN GROUT: Are there any other questions? I think this is important review that we do every year. The good news is that over the years we've been able to put into the rebuilt and rebuilding category. We've gone from 6 to 9 species, and if you include the recovered/rebuilding category, which we didn't have back when we started this process, we're up to 12.

We've also been able to knock down the number of unknowns from 8 to 5; and that's despite taking on additional species. Our concern here clearly has to be our concerned and depleted, which has actually increased from 10 to 12. All of these are species which we've been managing for a long time; except for coastal sharks.

I hope the Commission will take a good close look at this, and work together to try and move more into the rebuild and sustainable stocks.

**DISCUSS NEW ENGLAND FISHERY  
MANAGEMENT COUNCIL PARTICIPATION ON  
THE ATLANTIC HERRING SECTION**

CHAIRMAN GROUT: Okay the next is to discuss New England Fishery Management Council participation on the Atlantic Herring Section. Toni has a presentation. This was something that was brought up in the Coordinating Council.

MS. KERNS: Correct. The New England Fishery Management Council has expressed joining the Atlantic Herring Section, and this was done through discussions at the NRCC; as Doug just said. I think the purpose this was really done because of the last amendment that the Herring Section adopted; and the Council just really wants to have input on some of the measures that are being put forward through the Council.

I think things such as the carrier rules and transfers at sea were things of concern that they had expressed in the public comment. If there is interest in allowing this to occur, our guiding documents have provisions in them currently that don't allow for this to happen; so we would have to make some changes.

The ISFMP Charter only allows for council participation on management boards, it does not include Sections in that portion of the Charter. In addition, Amendment 1 in the Compact specifies that states may come together to form Sections; but there is no other jurisdictions that are allowed to do that. It's much more flexible to change the Charter than it is to change the Compact.

In order to make a change to the Compact, all the states would have to resign the Compact as well as Congress. If there is an interest in having the Council to have a voting seat on the Atlantic Herring Section, the least path of

resistance would be to change the Herring Section into a management board. The Policy Board would be the one that would make this decision.

I will note that the Atlantic Herring Section has not discussed whether or not they would want to give a voting seat to the New England Fishery Management Council. But in order for them to even allow that to happen, we would have to make these changes at this Board first.

CHAIRMAN GROUT: Ritchie White.

MR. WHITE: Did the Council give any rationale why they thought they needed a voting member; because we now allow a member to attend, and to speak, but does not vote?

MS. KERNS: I think I'll start and then Bob or Doug can fill in. They noted at the NRCC that the Commission has states that sit around the table on the New England Council, which have a voting seat; and that they were interested in a voting seat, because of the impact that the Sections decisions can have on federal vessels as well. Bob, do you have other?

CHAIRMAN GROUT: Just to point out that yes we did invite them to have a seat on the Section during the development of that management plan; but it was not a voting seat. I think because of the outcome of what we decided on that they were hoping that in future management measures that they would actually be able to participate and vote. Follow up Ritchie, and then Dennis.

MR. WHITE: I would think the first step in this is to have the Herring Section discuss this, and then make a recommendation back to the Policy Board.

MR. ABBOTT: I think it would be helpful if we really understood what they would gain by becoming a voting member. If we were to switch from being a Section to a Board, would we not also have to invite U.S. Fish and Wildlife

and the Feds to become members of the Board? Does that go along with it?

CHAIRMAN GROUT: Yes it would. We invite them under the process to be part of it. They don't always participate in it. But they have the opportunity under boards to participate; both services. Follow up.

MR. ABBOTT: Yes. Are there any boards that the Feds do not participate in; none that I know of?

MS. KERNS: I don't believe there are any boards that National Marine Fisheries Service does not sit on. But there are boards that Fish and Wildlife do not sit on.

CHAIRMAN GROUT: Pat Keliher.

MR. PATRICK C. KELIHER: I have mixed emotions on this. I mean there is obviously overlap between the Council and the Commission membership on both the Herring Section and the Council committee for herring. This is an obvious move, because of the disagreement on what they perceive as unfair impact to federal permit holders within the herring fishery.

We as states have the ability to impact federal permit holders with our rules and regulations and laws within the states. We do this with almost every one of our fisheries. I would tend to agree with Ritchie in this instance. I think this conversation should go back to the Herring Section, be fully vetted, and then a recommendation from the Section back to the Policy Board should be made.

CHAIRMAN GROUT: Bob.

EXECUTIVE DIRECTOR BEAL: I was going to make a number of the same comments that Pat made. You know this dialogue started at the NRCC, really over this number of different jurisdictional questions. Who has the authority to do certain things? ASMFC has spawning

closures that obviously extend out in the federal waters.

Those are solely in the ASMFC plan and not in the federal plan. There are things that the federal plan has that our plan doesn't have. As Pat referenced, there has been some disagreement on jurisdictions that the states have recently. The Council was hoping that if they had a greater integration into our process that some of these jurisdictional issues would be better addressed.

I'm not sure if they would or wouldn't, but that is where this was coming from. Referring it back to the Section probably makes a lot of sense. Any of these committees and boards and sections and everything else, there is a lot of overlap just by the state directors; regardless of the memberships.

All the states directors from Maine through Connecticut are on the New England Council and they're on our Section. Our Section goes a little farther south. There is a pretty considerable overlap already. But incorporating NOAA Fisheries and the Council is probably something worth discussing at the Section level.

CHAIRMAN GROUT: Okay, I think we have a direction forward. Is there any objection to having this be remanded to the Northern Shrimp Section for consideration? Excuse me, Atlantic Herring Section, not the Shrimp Section; I know where you stand on that but the Herring Section. Seeing none; we'll put that on the agenda for the next Herring Section meeting. Next we're going to Review and Consider Approval of Standard Meeting Practices. Toni.

**REVIEW AND CONSIDER APPROVAL OF  
STANDARD MEETING PRACTICES**

MS. KERNS: We've had to push this document off a couple of meetings. I'm pleased that we can get through this today. This document, which was on your meeting materials, was

established in order to help Chairs have something in front of them that would potentially make meetings more effective and efficient.

On the front side of the document it has required elements, and it provides information on quorums and voting procedures as defined in the Commission's guiding documents; things like what is a quorum, who is present at the meeting, who has authority to vote, what constitutes a final action.

On the backside of the document are the discretionary elements that were developed; which can be used by the Chair in order to make things go a little smoother. It includes things for process, for things such as allowing everyone to speak once before giving a second opportunity to individuals to speak; only allowing folks to speak two times per motion at meetings.

Using the no objection clause, so when taking up motions, asking if there is no objection instead of taking individual votes; especially on final actions, where we would have to go around and do the entire roll call. If the meetings are getting quite lengthy, and we're really running short on time, the Chair could have the ability to limit the amount of time each speaker takes; then as well as potentially using the one in favor, one against method when running short on time as well. If the Board does approve this document for use, then what we'll do is we'll make a laminated copy and we'll sit it up here for Chairs to have a helpful reminder as we go through each of our management boards.

CHAIRMAN GROUT: Are there any questions about this? As she said, this came out as a suggestion by Collette when we had our last meeting management training. The Executive Committee went through this and the staff put this together. I think it's a good summary. Are there any questions about it? We need to approve this, Dennis Abbott.

MR. ABBOTT: Well, I would like to approve it, but I would also like to comment on it if I could.

CHAIRMAN GROUT: Go right ahead.

MR. ABBOTT: I think over the years we've seen a marked improvement on board Chairs. I mean just this week watching John Clark operate, and particularly watching Bob Ballou operate yesterday on menhaden; was a good example of how good meetings should be run. I think this becomes a good primer for board Chairs to have in front of them. But again, I complement the board Chairs that we've had, as we continue to do better after having our training with Collette and whatever and whatever.

CHAIRMAN GROUT: Further comments or questions on this? Is there any objection to accepting this by unanimous consent? Okay we have approved the new standard operating procedures for meetings. Thank you very much, and thank you Toni and staff for putting this together. It is now time for a Progress Update on our Sturgeon Benchmark Stock Assessment. Katie.

#### **UPDATE ON THE 2017 ATLANTIC STURGEON BENCHMARK STOCK ASSESSMENT**

DR. KATIE DREW: I'll keep this brief. The Sturgeon Stock Assessment report went to the Peer Review Panel this Monday, so they will have two weeks to review it and we will be having the Review Workshop August 14 through the 17th, for them to actually get together with the lead analysts and have a discussion.

They will have then two weeks or so to write their final report, and the materials will be available for the board meeting in October; to get the final sturgeon stock assessment report. It's going to look a lot like what you saw for river herring and eel; in that this is a very data poor species, and we're kind of working with a strange set of datasets to figure out some status for this species. It's on track for your

review in October. I'll take any questions you might have.

CHAIRMAN GROUT: John.

MR. CLARK: Thank you, Katie. I recall when this benchmark process got started. One of the goals, I think of the management board was hopefully it would help in the getting sturgeon delisted. From the rumors I've heard, there won't be that type of information that could really help in such a process.

DR. DREW: I think the real hang up is that NOAA has not set its recovery targets yet; so there is no way for us to show that we've met any kind of recovery target without that. Having said that there are not really good estimates of abundance or spawning stock biomass for this species, either at the DPS or at the coastwide level, which again, not knowing what NOAA is going to set their targets at, I think that is kind of what's going to hinder any question of delisting.

MR. CLARK: Do you know when NOAA will be setting those recovery targets?

DR. DREW: No, we have not received any information on that. To be honest, I think they were sort of hoping that we would come out with some really great recovery targets. I think their plan is to, not to put words in their mouth, but my understanding is their plan is to review this assessment report and see what they can do with that information; in terms of setting recovery targets.

MR. CLARK: If you put into this assessment that we've now hit the recovery targets that could do it, right?

DR. DREW: For sure, we put some benchmarks in there and they could decide those are great and we will go forward with that. But let's not get too optimistic here.

CHAIRMAN GROUT: Chris Batsavage.

MR. BATSAVAGE: Actually Katie, I think you pretty much answered my questions; and yes you're right, without a recovery plan there can't be any delisting or down-listing processes to begin for Atlantic sturgeon. Yes hopefully the assessment passes peer review and provides some information that maybe can inform future recovery plans for the DPSs.

CHAIRMAN GROUT: Dave.

MR. DAVID BUSH: I understand that there are certain requirements that need to take place for this, and obviously I appreciate that. I would like to express that this is an issue, especially in some of our areas where we're trying to make efforts to remove an invasive species; but yet this is the choke species that's right there with that. It is an urgent issue for us. In some of our areas we have blue cats that have made their way into areas where they never use to be.

Trying to bring their populations under control or bring them down, or even create a market for them to keep them from destroying our estuaries that are now being hampered by our efforts to protect the sturgeon. I guess until we find a big blue cat with a belly full of baby sturgeon, I'm not sure what we're going to do next. Anything we can do to put a little heat on this would be greatly appreciated.

CHAIRMAN GROUT: Adam.

MR. NOWALSKY: I appreciate the update from staff. As Chair of the Sturgeon Board, I also want to thank them for having reached out to me; Max in particular, in trying to keep me up to date. I just want to extend this note to Commissioners that as of right now for the annual meeting for the Sturgeon Board, we don't have a whole lot for the agenda beyond the review of this assessment. If there are any potential action items, or something that staff would like looked at leading up to that. I would ask that they get in touch with myself or staff in advance; so we can have that prepared for you.

CHAIRMAN GROUT: Are there any other questions or comments? Seeing none; thank you, Katie, I appreciate it. Next we're going to Review and Consider Approval of the Assessment Schedule; Shanna.

#### **REVIEW AND CONSIDER APPROVAL OF THE ASSESSMENT SCHEDULE**

MS. SHANNA L. MADSEN: Diving right into the assessment schedule. I'm going to just run over some of the changes that have been made since the last time I spoke to you guys; I think May 2016. First of all, following the request of the Horseshoe Crab Management Board, we added a horseshoe crab benchmark assessment to the schedule in 2018.

SAW/SARC reviews were added to the schedule for Atlantic herring in 2018, and the 2019 summer flounder assessment was changed from an update to a benchmark at the Fall, 2016 NRCC meeting; with the potential to move it forward to 2018. The benchmark assessment for northern shrimp was moved back to spring, 2018, to accommodate a calibration study for the Summer Survey.

There is a necessary equipment change on the Summer Survey, so it requires some side-by-side-calibration tows. We also added a cobia SEDAR review to the schedule for 2019. During the call that the ASC had in the spring, we also got an update from the MRIP Transition Team. We discussed what that might mean for some of ASMFCs species.

Following their calibration model peer review, the re-estimation of the historical catch in effort could lead to some changes in stock statuses or quotas that would require management action. On the call, the ASC divided our ASMFC managed species into anticipated levels of impact; sort of based on the amount of recreational harvest that we typically see with these species. We looked at that and then compared it to the stock assessment schedule.

For now, mostly all of our potential high impact species, things like striped bass, are already on the stock assessment schedule in the very near future. The ASC decided to leave the assessment schedule as is. Once we actually get those calibrated numbers released, the ASC and the TCs can reevaluate the stock assessment schedule; and the timing, just based on the difference between those calibrated numbers and the previous numbers.

Jointly or cooperatively managed species, we said, you know that's kind of updated on the federal schedule. We just looked at the ASMFC species. Secondly, and I apologize for how awful this looks. This is the assessment schedule workload score sheet. You guys always get this when you receive the Excel file that contains the stock assessment schedule.

Essentially this workload score sheet is a way to calculate the workloads of the TC and the Stock Assessment Subcommittee members along our coast. Historically we update this on an annual basis; and it only includes benchmark stock assessments, and more recently we decided to add assessment updates to the score sheet.

The ASC has looked at this schedule and sort of realized that we're overlooking a lot of participation on other assignments that these folks are working on, on the other science committees, as well as tasks that are coming to us; either outside of a regular stock assessment. The ASC is going to kind of review this workload score sheet. We have a meeting in September planned. We're going to try to identify a more representative way of capturing scientist workload across the coast; which can kind of help with future task prioritization and will hopefully be able to bring some sort of improved score sheet to you guys at the annual meeting, is what we're hoping for. With that I will be happy to take any questions.

CHAIRMAN GROUT: Bob.

EXECUTIVE DIRECTOR BEAL: Can you switch back to the schedule? I think there is one update that probably needs to take place on this schedule; based on the last NRCC meeting in June. The summer flounder assessment will go through the SARC process in 2018, and that's to capture all the new recreational data, as well as some of the new methodologies being put forward by Pat Sullivan. I think that's the one update there.

Then while I'm speaking, the striped bass, SARC is in italics for next fall. That one is sort of tentatively put on the SARC schedule. We've been having trouble with getting species on the SARC schedule, to be kind of blunt. We're hoping to get that on the SARC schedule. We'll see how that goes, and we may need to find a different peer review venue toward the end of next year for the striped bass assessment.

CHAIRMAN GROUT: Are there any other questions, discussion? We need to approve this schedule as modified just now. I'm going to try and do it without a motion. **Is there any objection to approving this schedule as modified? Seeing none; it's approved by unanimous consent.** Finally we have a couple of reports from the Habitat and Artificial Reefs, as well as ACFHP from Lisa.

#### HABITAT COMMITTEE REPORT

DR. LISA HAVEL: I'll start out with our Habitat Committee report, which I haven't been able to give, I think over the past six months. This is what we've been doing for six months. The Habitat Committee met May 2nd and 3rd at the ASMFC offices in Arlington, Virginia. They received a presentation from Dr. Bob Orth from VIMS on Submerged Aquatic Vegetation in Chesapeake Bay.

They also checked in on Goal 4 progress from the Action Plan. This includes the SAV policy update, which I'll get into in a little bit; the progress on the Aquaculture Habitat Management Series document that they've

been working on, our 2017 Habitat Hotline, which will focus on submerged aquatic vegetation, as well as updating the species habitat fact sheets.

For the SAV policy update, this year marks the 20th anniversary of ASMFCs SAV policy. The Habitat Committee created a subcommittee, which then created a questionnaire to identify how ASMFC SAV policy has been implemented over the past 20 years; based on recommendations in the original policy.

We received results from nine states that have marine SAV within their borders. From these results, seven of the nine states have implemented a resource assessment and monitoring strategy. Three out of the nine states have evaluated the effectiveness of these measures they've put into place, to limit SAV damage. Five out of nine states have set restoration goals.

Eight out of nine states have identified the key reasons for SAV loss in their state. Six out of nine states have identified suitable areas for protection and restoration. Seven out of nine states have included SAV information in aquatic education programs, and eight out of nine states have supported SAV research. These graphs are all in your briefing material. The Subcommittee found that the goals in the original SAV policy are still relevant; and arguably the policy is more important now than ever. They would like to update the policy with new science and management issues; which includes adding new references, as well as adding some emerging issues such as aquaculture.

If you have any feedback on what you would like to see included in this SAV policy update, I would be happy to hear it. The Habitat Committee has also been working on a couple of letters to the Department of Interior. Last week we sent a letter to Secretary Zinke reiterating ASMFCs position on seismic testing.

Currently there is a comment period open for the 2019 to 2024 Outer Continental Shelf leasing. This closes on August 17, and the Habitat Committee wrote a draft letter; which was included in supplemental materials for Policy Board comments and edits, and possible approval. The draft letter includes a list of potential negative impacts to fish habitat; including noise, toxins, spills, blowouts and shoreline development.

The letter asks that BOEM does not lease on current and proposed HAPCs coming from the North Atlantic, Mid-Atlantic and South Atlantic Councils; as well as not leasing on any National Marine sanctuaries, parks and monuments; and these can be found in Massachusetts, Maryland, North Carolina, Georgia and Florida.

These suggestions are broad. For example, they do not include recommendations for seasonal closures in particular areas, boundaries, buffer zones for any of these areas. It's pretty general as it is now, and we're open to any comments or suggestions for anything to change or add to the letter.

CHAIRMAN GROUT: Are there any questions, first of all for Lisa about this and the SAV policy review? Seeing none; as Lisa pointed out, we have a letter in the packet in our briefing book, a draft letter that we're proposing to send to the Secretary. Are there any questions about the letter, any comments about the letter?

MS. KERNS: The letter is in the supplemental materials; if you're not familiar.

CHAIRMAN GROUT: I would like to see, is there any objection by the Policy Board to sending that letter as drafted right now? Yes, go ahead, Eric.

MR. REID: I have no problem with the letter. I am not sure if Hudson Canyon should be included as a proposed National Marine Sanctuary, because it's not here. I don't know what the status of that is; but there is some

activity on Hudson Canyon in the National Sanctuary.

MS. KERNS: We pulled it directly from the website.

CHAIRMAN GROUT: Any other comments or concern? Is there any objection to sending the letter? Seeing none; I see that approved by unanimous consent. Thank you. Now you have ACFHP.

DR. HAVEL: I still have a little more for Habitat.

CHAIRMAN GROUT: Okay, keep going.

DR. HAVEL: At the spring meeting, the Habitat Committee debated once again the merits of completing a document summarizing the Commission's HAPCs, Habitat Areas of Particular Concern for the 2018 Action Plan, and designating HAPCs where we haven't yet done so. There was a debate on whether the Commission should use the term HAPC, since it does not carry the same regulatory weight as the Federal HAPC designation.

The pros for using Habitat Areas of Particular Concern in a Commission context include consistency. It has been discussed twice in the past and approved by the Policy Board, and it would be beneficial possibly to try and initiate the use of HAPC in a broader term, similar to MSY, how MSY carries both a regulatory context, depending on when you use it, and also MSY is just a definition. There was argument in just saying HAPC could be a definition. Another pro is that we are currently using it in documents.

The cons are that using HAPC in a Commission context creates confusion for possibly staff, Commissioners, those reading these documents; and it could provide more work for the Commission in order to having to explain the difference in regulations, and how HAPC is designated between the Federal definition and the Commission definition. There was group

consensus from the Habitat Committee to continue using Habitat Areas of Particular Concern, but the consensus was not unanimous among the group.

I am open to feedback from you all, on whether a summary HAPC document, so it would be pulling all of the HAPC information from all the fishery management plans into one location, would be useful; whether we need to fill in the gaps for certain species, and whether we should continue using the term HAPC. If you all are interested in a document like this it would be added to the 2018 Action Plan.

CHAIRMAN GROUT: Okay, any feedback on this from the Policy Board here; one on whether we're using the definition, two, whether we want to bring all the HAPCs into a single document, and whether this document would be useful for us. Toni.

MS. KERNS: In addition, we are trying to get feedback of whether or not we should use the term HAPC or not, or if we should come up with some other term to use; because of the non-consent of the Habitat Committee, as well as in discussions with some Commissioners that I have had. The confusion of what it means to be an HAPC in the federal version versus the Commission; because we don't have any regulatory teeth associated with HAPCs for Commission documents. We really would like some feedback from you on this.

CHAIRMAN GROUT: Hands have gone up. I have John Clark, Roy and Chris.

MR. CLARK: I don't know if I have any way to clarify that; but I was just curious also. I know the regional planning bodies have come up with yet another term, I think they're using for, what is it Ecologically Rich Areas or something to that regard. Have you been working in conjunction with them also, Lisa, these regional planning bodies like the Mid-Atlantic and the New England?

DR. HAVEL: Not on that definition, no; but they do serve on the Habitat Committee.

CHAIRMAN GROUT: Roy Miller.

MR. MILLER: As I look over the list of Habitat Areas of Particular Concern that is in the appendix from the meeting materials for this discussion topic. I see specific banks and canyons and coral habitat, and identifiable marine landmarks and that kind of thing. Then I see summer flounder habitat. Summer flounder habitat sounds kind of vague to me. Isn't the entire Mid-Atlantic basically summer flounder habitat? Why would we pick out that particular species to be so general?

DR. HAVEL: Those in the letter to the Department of Interior, those are all of the Council HAPCs, so those are not necessarily the Commission HAPCs, which is a good example of how this is confusing. That list was pulled directly from the North Atlantic, Mid-Atlantic, and South Atlantic Fisheries Management Council websites.

There are certain areas, for example a particular canyon that are listed, but then there are also areas that are just summer flounder habitat; which does create some issues sometimes with artificial reefing, because South Atlantic Council designates artificial reefs as essential fish habitat, but if you put an artificial reef on, for example sand, you might be taking away other essential fish habitat; but all of that is the Council's definition of HAPC.

MR. MILLER: Just a follow up comment. If I were being asked to review offshore wind development proposals, for instance. Every single one of them is going to affect summer flounder habitat, because that is such a vast area; so therefore something as general as that lacks specificity, and therefore is not terribly useful from that standpoint, just a comment, thank you.

MR. BATSAVAGE: I think the confusion over HAPC and the Commission's habitat guidance versus the federal has been clearly stated here; and our agency is concerned about that confusion; with just our stakeholders, let alone the other folks that use this kind of information.

CHAIRMAN GROUT: Is there any other feedback on this, or questions, or comments? Ritchie.

MR. WHITE: If you're looking for a vote, I'm in favor of changing HAPC.

CHAIRMAN GROUT: Anybody else? I guess from my standpoint, as someone who sits on both the Council and the Commission, and formerly on the Regional Planning Body, I would concur with some of the comments here that we do need to come up with a separate term; because of the regulatory context.

Primarily from a way of making it clear to the public the difference, because we'll get asked questions on this; and it's a potential for misunderstanding from the public and some of our constituents on this. Has anybody given the two comments, and now three comments, does anybody disagree with that; that we should task the Habitat Committee with coming up with a different term from the prospect of the Commission's habitat areas that we are putting forward? Yes, John.

MR. CLARK: I'm just curious, Lisa. Did the Committee come up with any suggestions for different terms to use for this?

DR. HAVEL: The discussion always led to terms that are already there like, well the habitat just has to be essential. Well, we already have essential fish habitat. We spent some time on it, but did not come up with any recommendations; but we can do that for the annual meeting.

CHAIRMAN GROUT: Are there any further comments? Are we all comfortable with tasking the Habitat Committee with coming up with a

different term for the Commission purposes?  
Yes, go ahead Mark.

MR. MARK ALEXANDER: I was just going to suggest as the Council's present person on the Regional Planning Body that you avoid the term Important Ecological Areas; that is fraught with all kinds of problems, and you don't want to use that one.

CHAIRMAN GROUT: Good point, okay I think you have your charge on this; any thoughts on having this all taking some of the, I'm trying to avoid using Habitat Areas of Particular Concern, Important Habitat Areas from a Commission perspective, and putting them all into a single document. Would that be useful to the Commission; or is just okay to have it in each plan; any feedback on that? Go ahead, Russ.

MR. ALLEN: Yes, I think it would be a great idea, because as we go through waterfront development permits and things of that nature; our folks in permitting always ask us, well where can we find some information that would help out? Instead of sending them to different plans, I think just one summary would be a real good idea.

CHAIRMAN GROUT: Any other feedback? Anybody object to tasking them with doing this? Okay you have your answer to those two questions.

DR. HAVEL: Great, thank you all. Finally for the Habitat Committee, we have a new Chair; January Murray from the state of Georgia, and a new Vice-Chair Marek Topolski from the state of Maryland. With that I'll take any further questions on the Habitat Committee.

CHAIRMAN GROUT: Pat.

MR. KELIHER: Could you give me just a 30 second or less overview of what you're doing with aquaculture related to habitat? I saw a reference earlier in your presentation.

DR. HAVEL: When I started as the coordinator for the Habitat Committee there was an ongoing document regarding aquaculture. We're trying to complete it this year. We're pulling a lot of information from the South Atlantic Council's document on aquaculture; but moving it throughout the entire coast.

It's just a summary of the different aquaculture practices. There is a list of them by state, the benefits, and the impacts to fish habitat for the species that we manage. It's just a summary document on aquaculture practices. I don't know the background on to how that got started; but I think it was charged by the Policy Board a few years ago.

MR. KELIHER: Follow up. I haven't seen the draft document, so I want to make sure that Maine has an opportunity to take a look at this. Obviously we've got a very robust aquaculture industry in the state. Our laws and regulations focus on ensuring flora and fauna associated with aquaculture is not impacted; and want to make sure that there are no negatives from what may come out of this document, based on how we promulgate our leases.

CHAIRMAN GROUT: Toni.

MS. KERNS: Pat, since you currently don't have a Habitat Committee member, is there a person that you could forward to myself or Lisa that we could touch base with to give us some input?

MR. KELIHER: Yes. The coastal program within the state of Maine has just been absorbed into the department, and my plan is to task somebody from that group and put them on the Habitat; so I'll definitely do that.

CHAIRMAN GROUT: Any other feedback, comments for Lisa on the Habitat Committee? Seeing none; Lisa, move forward.

### **ARTIFICIAL REEF COMMITTEE REPORT**

DR. HAVEL: The other two updates will be more brief. First the Artificial Reef Committee report. The ASMFC and Gulf States Marine Fisheries Commission Artificial Reef Committees met February 7th and 8th in Jacksonville, Florida. They held discussions on HAPCs, the federal definition, permitting and reef deployment complications, and history resource survey requirements; solicited feedback from the 2016 National Artificial Reef Workshop that we co-hosted with NOAA Fisheries.

There were guest presentations about fish aggregating devices in Japan, as well as a presentation on northeast Florida's Offshore Reef Fisheries Independent Monitoring Program. Everyone provided state updates, and the next meeting will be hosted by the Gulf States Marine Fisheries Commission in early 2018.

I am currently serving as the Commission representative on a symposium that the Florida Fish and Wildlife Conservation Commission is hosting at the American Fisheries Society meeting in Tampa in about two weeks; so I've been on that Steering Committee to bring together presentations.

I am also leading the development of the South Atlantic Council's Artificial Reef Essential Fish Habitat Policy Document. We formed a subcommittee from North Carolina, South Carolina, Georgia, Florida and BOEM created a draft policy, which is no longer currently in our view. That actually was sent out. Well, the draft is finalized and it will be reviewed by the Council's Policy Board for approval and adoption in September. That is all I have for the Artificial Reef Committee. Does anyone have any questions?

CHAIRMAN GROUT: John.

MR. CLARK: It's not a question, I just wanted to announce that on the artificial reefs, we just

acquired one of the Cape May Louis ferries; and it will be sunk next year on the Del/Jersey/Land Reef, which is the reef that is jointly managed by Delaware, New Jersey and Maryland. I believe this is a fairly unique vessel to be sunk on the east coast. It's over 300 feet long, and with the big ferry structure, it's going to be considered a very good diving type of reef; because you'll have that big area to swim under there.

CHAIRMAN GROUT: Other questions, comments? Okay, Lisa.

### **ATLANTIC COASTAL FISH HABITAT PARTNERSHIP REPORT**

DR. HAVEL: Finally, the Atlantic Coastal Fish Habitat Partnership update. The ACFHP Steering Committee met May 4th and 5th at the ASMFC offices in Arlington, Virginia. A full day of this meeting was dedicated to action planning. The group also received updates on science and data initiatives; the Melissa Laser Award recipient and collaboration with the National Fish Habitat partnership and other fish habitat partnerships.

For the past year and a half, we've been working on our five-year-conservation-strategic plan, as well as our two-year-action plan; and this was finalized and released on July 21, 2017, so it's a very new document for us. It includes goals, objectives, strategies and actions to accelerate the conservation of ACFHPs priority fish habitats; and it is available on the ACFHP website, as well as on the table right outside there.

We are also currently working on a business plan. We're on our fourth internal draft, and on track to be finalized for the end of this year. For our Science and Data Initiatives, we're moving forward on a southeast fish habitat mapping project. This is funded by NOAA; and it covers North Carolina to Florida.

We're working to spatially prioritize fish habitat areas for protection and restoration. We're working on GIS mapping and analysis, looking at habitat threats, first fish presence/absence, and habitat maps. We held a webinar with the Science and Data Committee on June 12, and we are planning a two-day meeting at the end of September.

We have been approved for U.S. Fish and Wildlife National Fish Habitat Action Plan funding for FY17. This funding will go towards ACFHP operations, website development, including putting the species habitat matrix, which was published back in 2016 online into a searchable database. It's also going to fund two conservation projects; one in Maine and one in North Carolina.

The Maine project is a Sheepscott River barrier removal. It includes both the Cooper Mill Dam and a Head Tide partial removal; and will open 71 river miles for Atlantic salmon, river herring, shad and other diadromous species. It includes extensive outreach to the community. This river is the southernmost Atlantic salmon river designated as critical habitat; and it is being led by the Atlantic salmon federation.

Our North Carolina project that we're working to support is in Bogue Sound. It is being led by the North Carolina Coastal Federation, and they are using recycled oyster shells placed on 300 feet of shoreline; to promote salt marsh growth. This is a nursery habitat for black sea bass and red drum, and a feeding ground for summer flounder. With that ACFHP would like to thank the Commission's continual support, and I'll take any questions.

CHAIRMAN GROUT: Are there any questions for Lisa? Okay, seeing none; thank you very much, Lisa. I appreciate your report.

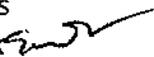
#### **ADJOURNMENT**

CHAIRMAN GROUT: That brings us, since we have no noncompliance finding to other

business. Does anybody have any other business to bring before the Policy Board? Seeing none; this meeting is adjourned.

(Whereupon, the meeting was adjourned at 10:13 o'clock a.m., August 3, 2017.)

July 10, 2017

To: Secretary Ross  
Fr: Earl Comstock   
Re: Decision on New Jersey Fishery Management Issue

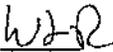
Recreational fishing for summer flounder off the Atlantic coast is one of a number of fisheries managed by the Atlantic States Marine Fisheries Commission ("Commission"). The Commission is composed of all 11 states that border the Atlantic, and each state has one vote. The Commission was established by an Act of Congress and adopts fishery management measures for stocks that migrate among the various states. The fishery management measures are implemented by the States, or, if the States disagree or don't comply, by regulations adopted by the Department of Commerce.

For summer flounder, the Commission adopted regulations that differ among the States to try and ensure the combined catch by all States stays within limits and allows for rebuilding of the stock. New Jersey and New York account for the lion's share of the summer flounder catch. New Jersey disagreed with the methodology used to establish the fishing restrictions that the other 10 states voted to adopt for New Jersey. New Jersey argued, unsuccessfully, that the size limits adopted were not reflective of the size of fish found off New Jersey, and would result in a large number of fish having to be discarded, many of which would die as a result of handling by fishermen to remove the hook. New Jersey argued the Commission size limits would cause anglers to switch to other states, to the serious detriment of the New Jersey businesses and beach communities that depend on recreational fishing.

Given the multi-billion dollar recreational fishing industry that helps support New Jersey coastal communities, New Jersey did not adopt the Commission size limits, and instead adopted a lower size limit with a reduced number of fishing days, and cited analysis by their fishery management department that showed that the lower size limit would result in lower discard mortality. In addition, New Jersey started an aggressive angler education campaign and is distributing 20,000 J hooks for free to further reduce discard mortality.

The Commission has sent you a letter asking you to find New Jersey out of compliance with the Commission's regulations. A finding of non-compliance would result in a moratorium on fishing for summer flounder off New Jersey, beginning on a date you would determine. However, you can also find New Jersey in compliance. NMFS has reviewed the New Jersey methodology, and agrees that the New Jersey regulations should result in lower discard mortality and therefore have the same net conservation effect on the summer flounder stock as the Commission rules.

I recommend you find New Jersey in compliance. The New Jersey approach has the same conservation impact but is significantly better from the economic perspective because it preserves jobs and revenue that are critical to New Jersey beach communities.

Agree  Disagree, I find New Jersey out of compliance \_\_\_\_\_



JUL 11 2017

MEMORANDUM FOR: Chris Oliver  
Assistant Administrator for Fisheries

FROM: Alan Risenhoover  
Director, Office of Sustainable Fisheries

SUBJECT: Atlantic States Marine Fisheries Commission State of New Jersey Compliance Finding for Summer Flounder--  
INFORMATION MEMORANDUM

The Secretary of Commerce has determined, based on the information communicated to him, that the alternative measures implemented by the State of New Jersey for the 2017 recreational summer flounder fishery are compliant with the intent of the Atlantic States Marine Fisheries Commission's (Commission) Summer Flounder, Scup, and Black Sea Bass Interstate Fishery Management Plan (ISFMP).

The information below supports the Secretary's determination that while New Jersey failed to carry out its responsibility to implement the Commission's measures under the ISFMP, the measures New Jersey did implement are likely to provide equivalent total conservation as those required by Addendum XXVIII to the ISFMP.

This information is based upon the findings made during the noncompliance process of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act). These provisions were triggered when the Commission found New Jersey out of compliance with the ISFMP and forwarded that finding to the Secretary for formal review in a letter dated June 8, 2017. As required by the Atlantic Coastal Act, a decision must be made by July 11, 2017.

## BACKGROUND

### Statutory Requirements

The Atlantic Coastal Act, 16 U.S.C. 5101 *et seq.*, contains a noncompliance review and determination process that is triggered when the Commission finds that a State has not implemented measures specified in an ISFMP and refers that determination to the Secretary for review and potential concurrence.

The Atlantic Coastal Act's noncompliance process involves two criteria. The Secretary must determine: 1) whether the State in question has failed to carry out its responsibility under the Commission's ISFMP; and 2) if so, whether the measures that the State failed to implement and enforce are necessary for the conservation of the fishery in question.



to implement and enforce are necessary for the conservation of the fishery in question. These initial findings must be made within 30 days after receipt of the Commission's noncompliance referral.

If the Secretary determines a State is noncompliant with both of these criteria, the Atlantic Coastal Act mandates that the Secretary impose a moratorium on fishing in State waters in the fishery in question.

### **Background on the Commission's Noncompliance Referral**

The summer flounder stock is subject to overfishing. Catch limits for the 2017 fishing year were reduced 30 percent from 2016 in an effort to end overfishing. For the recreational fishery, fishery managers adopted a set of coordinated conservation measures in state and federal waters to constrain recreational harvest to the catch limit in place for the year. In federal waters, the Mid-Atlantic Fishery Management Council (Council) establishes the recreational measures through the 2017 recreational management measures specifications. In state waters, the Commission and its member states coordinated 2017 recreational measures through Addendum XXVIII to the ISFMP.

New Jersey did not implement Addendum XXVIII's conservation measures in state waters.<sup>1</sup> Instead, New Jersey implemented size limits that are 1-inch lower in each region (i.e., 18 inches rather than 19 inches in the majority of its marine waters) and instituted a season of 104 days (rather than the prescribed 128 days). The bag limits remain the same as those required under the addendum. New Jersey asserts that its measures provide an equivalent amount of conservation. The Commission disagreed.

The Commission met on three separate occasions this year to discuss New Jersey's measures: May 10; May 22; and by conference call on June 1. The Commission's Technical Committee also reviewed and commented on New Jersey's measures. The Technical Committee found the New Jersey measures were not conservation equivalent in that they would not achieve the harvest reductions derived from the addendum's standard methodology. However, the Technical Committee commented that New Jersey's measures would potentially result in the same level of total mortality as Addendum XXVIII measures. The Technical Committee's May 18, 2017, memorandum outlining its findings is attached in Appendix A.

The Commission found New Jersey out of compliance during the June 1 conference call. All states except New Jersey voted in favor of this finding. The Commission formally

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<sup>1</sup> For New Jersey, Addendum XXVIII required the following measures:

- Shore mode for Island Beach State Park only: 17-inch minimum size limit; 2-fish possession limit and 128-day open season.
- Delaware Bay only (west of the COLERG line): 18-inch minimum size limit; 3-fish possession limit and 128-day open season.
- All other marine waters (east of the COLERG line): 19-inch minimum size limit; 3-fish possession limit and 128-day open season.

referred its noncompliance finding to the Secretaries of Commerce and Interior in a letter dated June 8, 2017. NOAA received the letter on June 11<sup>th</sup> and began the Atlantic Coastal Act's 30-day determination clock on June 12<sup>th</sup>. We also advised the public of the referral in a *Federal Register* notice dated June 22, 2017 (82 FR 28476). Letters soliciting comments on the Commission's noncompliance determination were sent to the Commission, Council, New Jersey Governor Chris Christie, and U.S. Fish and Wildlife Service.

Consistent with the noncompliance provisions of the Act, New Jersey was invited to present the rationale for its assertion that the measures implemented for 2017 comply with the ISFMP. On June 20, 2017, Commissioner Bob Martin of the New Jersey Department of Environmental Protection (NJDEP), Russ Allen, chief of the NJDEP's Bureau of Marine Fisheries, other NJDEP staff, and NOAA and Department of Commerce staff met via conference call. During this meeting, New Jersey provided extensive background materials in support of its measures. The New Jersey officials stated these materials and analyses support that their measures are conservationally equivalent to Addendum XXVIII and therefore comply with the ISFMP. New Jersey outlined again, as it had for the Technical Committee and Commission, that its measures would reduce overall mortality of summer flounder and would conserve a greater number of total fish than would the addendum. They reiterated the points included in a previously submitted letter dated June 16, 2017 (Appendix B). New Jersey also provided an update on their public outreach and education efforts to minimize discard mortality. They anticipate preliminary results on the effectiveness of these efforts in August 2017.

We received one comment in response to our solicitation letters. On June 26, 2017, the Council sent us a letter indicating that summer flounder needed conservation and that New Jersey's measures provided insufficient conservation (Appendix C).

### **30-Day Determination**

The basis for the 30-day determination under the Atlantic Coastal Act (16 U.S. Code § 5106(a)(1), (a)(2), and (c)(1)) is discussed below.

1) *New Jersey did not fulfill its responsibilities under the ASMFC ISFMP for Summer Flounder (Addendum XXVIII)*

The record is clear and New Jersey does not dispute that it did not implement the measures required under Addendum XXVIII. Addendum XXVIII required the states to implement specific recreational management measures developed to constrain catch within the 2017 summer flounder recreational harvest limit. New Jersey adopted measures with different minimum sizes and season lengths than those required by the Commission. Therefore, New Jersey failed to fulfill its responsibilities under the ISFMP.

2) *The measures that New Jersey failed to implement are not necessary for the conservation of summer flounder.*

Both the Federal FMP and state ISFMP require that management measures are tied to the available recreational harvest limit. The recreational harvest limit is a cap on landed catch (harvest), rather than on total catch (removals), which would include consideration of discards and discard mortality. Constraints on harvest are the tool used to ensure that the limit is not exceeded. All other states developed and implemented recreational management measures to achieve the necessary harvest reduction as the key to ensure consistency with the overarching ISFMP requirements. The New Jersey measures are inconsistent with this aspect of the ISFMP. Instead of the standard harvest-based management, New Jersey compares its measures with the Commission's in terms of total mortality of summer flounder. This creates a fundamental disconnect in considering the conservation need for the stock: The FMPs do not currently evaluate the total mortality on the stock directly. New Jersey personnel, the Technical Committee, and Commission members rightly point out that the New Jersey measures will increase harvest, projecting total harvest to increase by about 95,000 more fish than would have been expected under the Commission's addendum. If the conservation of the summer flounder stock was defined solely by being equivalent to this harvest metric, New Jersey would be out of compliance.

However, based on the analysis provided by the State, it is likely that New Jersey's measures will result in similar levels of total removals as the measures outlined in Addendum XXVIII. That is, although New Jersey's measures would result in higher harvest, they should result in lower discard mortality, and thus ultimately fewer dead summer flounder, the number of which is comparable to the target set forth in the Commission's addendum requirements (See correspondence Appendices A and B for additional detail). Importantly, the Technical Committee did not disagree with this assertion. In fact, although the Technical Committee noted uncertainty in New Jersey's new approach, the Technical Committee projected that New Jersey's measures could result in a similar level of overall removals—and thus conservation—as the Commission's plan.

*3) A moratorium in New Jersey State waters is not required.*

Although the first criterion outlined in the Atlantic Coastal Act regarding noncompliance was met, the second criterion was not. Because New Jersey's measures may achieve an equivalent amount of conservation in terms of total fishing mortality, we cannot conclude the Addendum XXVIII measures are necessary for the conservation of the summer flounder stock. As a result, a moratorium in State waters is not required under the Atlantic Coastal Act.

Attachments



## Atlantic States Marine Fisheries Commission

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

### MEMORANDUM

May 18, 2017

**To:** Summer Flounder, Scup, and Black Sea Bass Management Board  
**From:** Summer Flounder, Scup, and Black Sea Bass Technical Committee  
**RE:** Review of New Jersey Proposal for 2017 Summer Flounder Recreational Management

#### List of Participants

John Maniscalco (NY)	Tiffany Vidal (MA)	Peter Clarke (NJ)
T.D. VanMiddlesworth (NC)	Bob Glenn (MA)	Jeff Kipp (ASMFC)
Brandon Muffley (MAFMC)	Toni Kerns (ASMFC)	Justin Davis (CT)
Katie May Laumann (VA)	Emily Gilbert (NMFS)	Steve Doctor (MD)
Kirby Rootes-Murdy (ASMFC)	Kiley Dancy (MAFMC)	
Jason McNamee (RI)	Mark Terceiro (NEFSC)	
Rich Wong (DE)	Jeff Brust (NJ)	

The following memo contains the Summer Flounder, Scup, and Black Sea Bass Technical Committee (TC) Review of the New Jersey Proposal for 2017 Summer Flounder Recreational Management.

#### New Jersey Proposal

At the ASFMC Spring Meeting in May 2017, the Summer Flounder, Scup, and Black Sea Bass Board moved to approve proposed 2017 summer flounder recreational measures that were subject to review and approval of the TC and subsequent Board consideration and approval. Those measures were as follows:

- Shore mode for Island Beach State Park only: 16-inch minimum size limit; 2-fish possession limit and 104-day open season (May 25-Sept 5)
- Delaware Bay only (west of the COLREGS line): 17-inch minimum size limit; 3-fish possession limit and 104-day open season (May 25-Sept 5)
- All other marine waters: 18-inch minimum size limit; 3-fish possession limit and 104-day open season (May 25-Sept 5)

The proposed measures for New Jersey (NJ) differed from the Addendum XXVIII measures, which specified that all states within the management unit (with the exception of North Carolina) would increase their size limit by 1 inch and decrease their possession limit to no more than 4 fish from 2016 measures. In tasking the TC with reviewing the proposed measures, the Board requested that the TC evaluate the proposal under conservation equivalency and determine whether the harvest reduction from the proposed measures were equivalent to those required under

Addendum XXVIII. NJ staff sent the TC their proposal on Friday, May 12<sup>th</sup>. The proposal noted that proposed measures would reduce New Jersey's harvest in 2017 by 24% from 2016 levels and reduce total fish removals (harvest + dead discards) by 30% relative to the 2016 NJ state measures. The calculations in the proposal used preliminary 2016 MRIP harvest information through wave 5 (September/October) as well as the harvest to discard ratio derived from the NJ Volunteer Angler Survey (VAS).

The TC met via conference call on Tuesday, May 16<sup>th</sup> to review the proposal and provide comments for the Board's consideration. Below are summary points provided by the TC:

- TC members considered the NJ proposal specifically with regards to whether the proposed measures were conservationally equivalent to the harvest reductions prescribed in Addendum XXVIII. The TC found that when comparing the harvest reduction derived from the standard methodology using final 2016 MRIP harvest in numbers of fish, the reductions were not equivalent; there was a greater reduction in harvest under the Addendum XXVIII measures than the NJ proposed measures. NJ evaluated the proposed measures for the entire NJ coast, and did not break out reductions associated with proposed measures to Island Beach State Park nor for NJ waters in the Delaware Bay. The NJ proposal indicated the proposed measures, using preliminary MRIP data through wave 5, would result in a decrease of 24% in the NJ projected harvest in 2017; under the Addendum XXVIII measures NJ's projected harvest would decrease by 33%. The TC acknowledges that additional harvest from Delaware Bay and Island Beach State Park are likely to be minimal. During the call, the TC asked to evaluate the reductions from the two sets of measures using final 2016 MRIP harvest as it was the best available information. In using the final harvest estimates, the reduction from the NJ proposed measures decreased to 20.6% while the reduction associated with Addendum XXVIII measures remained 33% (see below, Table 1). Given that final 2016 MRIP harvest estimates are available and it does impact the reduction associated NJ proposed measures, the TC indicated that final MRIP harvest estimates should be used.

**Table 1. New Jersey Projected 2017 Harvest (A+B1) under different scenarios**

Approach	Area specific	Management Measures	Projected Harvest in numbers of fish (MRIP data A+B1)	Percentage Reduction
2016 Status quo measures	New Jersey*	18" 5 fish 128 days	754,706	0%
	NJ/DE Bay COLREGS**	17" 4 fish 128 days		
NJ 2017 Proposed measures	New Jersey	18" 3 fish 104 days	599,032	20.6%
	NJ/DE Bay COLREGS	17" 3 fish 104 days		
ASMFC Addendum XXVIII Measures	New Jersey*	19" 3 fish 128 days	505,201	33.1%
	NJ/DE Bay COLREGS**	18" 3 fish 128 days		

\*New Jersey east of the COLREGS line at Cape May, NJ will have management measures consistent with the northern region of Connecticut – New York.

\*\*New Jersey west of the COLREGS line at Cape May, NJ inside Delaware Bay will have a similar size limit to DE-VA, the same possession limit and the same season length as Connecticut – New York.

- The TC also reviewed whether the NJ proposal would reduce total fish removals (harvest + dead discards), a key argument of the proposal in conserving the summer flounder resource. The proposal outlined a methodology that incorporated NJ VAS data to calculate a harvest to discard ratio and through an outreach and education program, the number of fish killed through recreational harvest and discarding would be less than under the Addendum XXVIII measures. This was considered a new approach relative to previous analysis conducted by the TC, and the TC indicated some interest in further evaluating a harvest to discard ratio in developing measures. While the NJ VAS data was noted to have an adequate sample size, given concerns on how representative this data was of NJ anglers, the TC noted that the harvest to discard ratio should come from MRIP data to be consistent with data used to calculate harvest reductions, rather than the combination of NJ VAS and MRIP data in the proposal. After reviewing the NJ proposal using final MRIP estimates and a 10% discard mortality rate and prior to evaluating discards during the closed season, the NJ option achieved a 21% total fishing mortality savings compared to the 18% total fishing mortality observed in Addendum XXVIII (Table 2).
- The second step in evaluating reduction in total fish removals, was the application of a new discard mortality rate. The NJ proposal offered that through outreach and education, the recreational discard mortality rate of 10%- currently used in the peer reviewed 2013 stock assessment and subsequent updates, would be reduced by 2% to 8%. In considering the proposal's methodology for achieving a reduced recreational fishing discard mortality, the TC took issue with this assertion, most notably in the lack of data or peer-reviewed literature to support

the assertion that the discard mortality rate would decrease by specifically 2%. Furthermore, NJ staff did not indicate how the 2% reduction in the recreational discard mortality rate could or would be quantifiable. When total fish removals under the measures specified in the NJ proposal were re-analyzed assuming only the 10% discard mortality rate, the difference between total recreational removal reductions under Addendum XXVIII and the NJ Option was decreased. Additional modifications were to incorporate the final 2016 MRIP estimates and use harvest: discard ratios developed from MRIP data as opposed to NJ VAS data in addition to reverting back to a 10% discard mortality; the results under these scenarios of different data and assumptions are included in Table 2 below.

**Table 2. Reduction in Total Recreational Fishing Removals (based on MRIP harvest in number of fish)**

	Recreational Discard mortality rate	Measures	Total Harvested	Total Dead (Harvested + Dead Discards)	Total Recreational Fishing Removals Compared to 2016 Regulations	Total Recreational Fishing Removals Compared to ASMFC Addendum XXVIII
Preliminary 2016 MRIP data through Wave 5 (Sept/Oct)*	10%*	Addendum XXVIII Measures	526,898	1,159,176	-14%	0%
	8%*	NJ 2017 Proposed	605,256	944,199	-30%	-19%
Final 2016 MRIP data**	10%	Addendum XXVIII Measures	505,201	1,115,438	-18%	0%
	10%**	NJ 2017 Proposed	599,032	1,083,843	-21%	-3%

\*These data and assumptions were presented in the NJ proposal.

\*\*These data and assumptions were inputted and adjusted during the TC conference call.

**Note:** Harvest to discard ratios were derived for final 2016 MRIP data analysis using MRIP data; the NJ proposal ratio were derived from NJ VAS data. Additionally, NJ proposed measures do not account for changes in discard mortality due to a shorter season in 2017.

- The point was made by members of the TC that the NJ proposal ignores the discards that would occur when the fishery was closed. This is problematic as it creates a logical inconsistency in the proposal, in that the crux of the proposal is that the new methodology accounts for all fishing removals, not just harvest. There was a discussion about the magnitude of these discards, and an alternate calculation was performed to try and account for these missing discards. There were different results presented from these additional analyses, resulting in the TC being unable to determine whether the NJ proposal would result in equivalent or reduced total recreational fishing removals relative to the Addendum XXVIII measures. As such, the TC did not agree with the NJ proposal that total recreational fishing removals would be reduced to a greater level under the NJ

proposed measures than under the Addendum XXVIII measures given the uncertainty associated with the assumptions of no discarding of summer flounder once the fishing season is closed and reduced discard mortality through outreach efforts. Additionally, given the new analyses conducted on the call showed a range from increasing discard mortality to reducing discard mortality in the NJ proposal, it was impossible to make a judgement on equivalency without additional work being done on the proposal.

- Members of the TC also noted concern about the timing of the proposal relative to the current fishing season. TC members made clear that all other states had implemented 2017 measures per Addendum XXVIII requirements and that considering a radically different conservation equivalency proposal after other states regulations had been promulgated was problematic as the other states would not have an opportunity to apply this new methodology to their data.
- The TC considered the new methodology from the proposal used to develop NJ's proposed measures as well as the stated objective (reducing total recreational fishing removals rather than harvest alone). This approach was unique and different from the standard methodology for developing measures as well as the FMP requirement of constraining harvest to the annual coastwide Recreational Harvest Limit (RHL). The TC noted this would effectively set different standards for evaluating New Jersey measures relative to the other states resulting in a logical discrepancy between the various approaches creating issues of inequity. The TC also noted that the increased harvest by NJ under their proposal threatens the ability of the states to constrain harvest to the RHL.
- In considering the proposed objective in the NJ proposal of reducing total recreational fishing removals, the TC was in agreement that this was a concept that was a potential improvement to the current approach of constraining coastwide harvest to the RHL, but believes the NJ method warrants further refinement before it can be incorporated into recreational management. It should be noted that currently as part of the Summer Flounder FMP, the annual catch limit (ACL) takes into account both harvest and discards in setting the RHL, and that further evaluation of reducing discards should consider the ACL. The TC did commend the NJ staff for providing a novel approach to incorporating discards and discard mortality into consideration for setting recreational measures. The TC has argued in favor of using a fishing mortality based approach for managing recreational fisheries, including taking into account the status of the resource. For summer flounder, with the stock assessment indicating that the resource is experiencing overfishing, reducing mortality associated with discarding may provide additional conservation benefits in helping the stock. The TC is interested in pursuing more of a fishing mortality based approach to recreational management relative to the current harvest limit-based management; it was noted that the Mid-Atlantic Fishery Management Council is current accepting proposals on this concept specifically for summer flounder.

- Lastly, the TC was in favor and supportive of NJ's proposal of conducting more angler education and outreach to help reduce recreational discard mortality, despite the inability to quantify the benefits specifically.

In summary, the TC noted that in the standard comparison of harvest, the NJ proposal was not conservationally equivalent to the Addendum XXVIII measures. It is important to understand that this standard is a component of the Summer Flounder FMP as the recreational fishery performance is evaluated against the RHL. When examining the new and separate comparison of total recreational fishing removals (harvest and discard mortality in total), there was too much uncertainty to determine equivalency between the NJ proposal and the Addendum XXVIII measures due to unquantifiable reductions in discard mortality in the proposal and the unaccounted for discards during the closed seasons. Therefore, this work on total recreational fishing removals needs additional refinement before a determination can be made.

## **New Jersey 2017 Conservation Equivalency Management Measures for Recreational Summer Flounder**

### **I. Introduction**

The State of New Jersey has received a copy of the Atlantic States Marine Fisheries Commission's (ASMFC) letter to the Secretary of Commerce dated June 8, 2017 providing notice that ASMFC found New Jersey out of compliance "for not fully and effectively implementing and enforcing Addendum XXVIII to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan."

The State of New Jersey disagrees with the finding of the ASMFC and submits the following comments, pursuant to 16 U.S.C. § 5106, in support of its request that the State be found in compliance for 2017.

This document outlines New Jersey's management measures for recreational summer flounder for 2017 under conservation equivalency and the approach used to compare total mortality and harvest mortality reductions under the ASMFC Addendum XXVIII (Addendum) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

New Jersey has implemented regulations which reduce total fish mortality beyond the ASMFC's measures in the Addendum to the FMP. By establishing an 18-inch size limit, 104-day season, and 3-fish bag limit measures for its 2017 summer flounder recreational season New Jersey is meeting the objective set forth in the FMP to "reduce fishing mortality of summer flounder to assure overfishing does not occur..." New Jersey has also achieved conservation equivalency with the summer flounder management measures for 2017 established in the Addendum.

Regrettably, the ASMFC rejected these measures, even though New Jersey demonstrated that its measures preserve more of the summer flounder stock than if the measures required by ASMFC were in place. As explained below, New Jersey's measures represent responsible management of the summer flounder resource. Therefore, the State of New Jersey should be found in compliance due to its adoption and implementation of conservation equivalency for management of its summer flounder fishery for 2017.

### **II. Background**

In 2014, 2015 and 2016, the New Jersey recreational summer flounder regulations followed a three-state regional approach where the regulations (size, season, and bag limit) have been consistent within all three states in the region (Connecticut, New York, and New Jersey). These regional measures included an 18-inch size limit, 128-day season, and 5-fish possession limit for all three years.

In December 2016, the ASMFC formally proposed an Addendum setting forth management measures to implement the reduced 2017 annual harvest limit established by the ASMFC and the

Mid-Atlantic Fishery Management Council (MAFMC), including five different options for meeting the goals of the management measures. The ASMFC accepted public comment on the Addendum until January 19, 2017.

The New Jersey Marine Fisheries Council (Council) met on January 5, 2017 to discuss concerns regarding both the enormous reduction to the Recreational Harvest Limit for 2017 and the avoidable harmful economic, social, and cultural impacts the proposed measures would have on New Jersey's recreational summer flounder fishery. The Council then unanimously opposed all options in the proposed Addendum. That same evening, ASMFC held a summer flounder public hearing in New Jersey regarding the Addendum with more than 150 people in attendance. Public participants unanimously opposed the Addendum.

At the ASMFC's Management Board (Board) meeting on February 2, 2017, the Commissioner Bob Martin of the New Jersey Department of Environmental Protection (DEP), testified to express New Jersey's concern about the strength of the science of the Addendum and the impact these decisions would have on the recreational fishing industry in New Jersey. Nevertheless, the Board voted to pass the Addendum, with New Jersey and two other states opposing.

The Board's action approving the Addendum and continuing regional management measures for 2017 require a 33% reduction from the 2016 harvest limit for the New Jersey, New York and Connecticut region. As a result, New Jersey was required to implement a 19-inch minimum size, 128-day season, and a 3-fish possession limit for 2017.

New Jersey filed a formal appeal of the Board's decision through the ASMFC's Charter Appeals Process. Within the appeal, New Jersey argued that the ASMFC:

- 1) Did not follow proper process in reaching its decision on Addendum;
- 2) Inappropriately used technical information in their decision-making process; and
- 3) Passed management measures that result in unforeseen impacts, including significant economic impacts.

The appeal was submitted to ASMFC on March 24, 2017. The appeal underwent preliminary review by the ASMFC leadership on April 14, 2017, which accepted only the procedural challenges for full review by the ASMFC Policy Board during its meeting on May 11, 2017. ASMFC dismissed out of hand those aspects of New Jersey's appeal based on flaws in the science ASMFC used and on the negative economic impact the regulation would have on the people of New Jersey who rely, directly and indirectly, on the ocean resources to earn their living.

The 19-inch size requirement would also be especially harmful to a major element of New Jersey's fishing industry – which employs more than 20,000 people and contributes \$2.5 billion to the State's economy – because 19-inch fish are rarely found in the waters off the coast of New Jersey. Indeed, fewer than one in ten fish in New Jersey's waters reach 19 inches or above (see Table 1).

The appeal was postponed because on May 10, 2017, the ASMFC Board passed a motion to have the Summer Flounder, Scup, and Black Sea Bass Technical Committee (TC) review New Jersey's proposal for conservation equivalency. The appeal was subsequently rescheduled again on June 1, 2017, and is currently scheduled to be heard at the ASMFC August meeting.

On May 18, 2017, the TC sent a memo to the Board stating that “in the standard comparison of harvest” the New Jersey proposal would not achieve conservation equivalency. However, ASMFC has acknowledged that its approach contains many uncertainties and requires significant refinement. Many of these uncertainties and concerns were laid out in the April 5, 2017 letter from the ASMFC to the National Oceanic Atmospheric Administration (NOAA) regarding the conservation equivalency of Addendum XXVIII. Therein, ASMFC noted that the TC has expressed concern about the “volatility of MRIP and predictability of crafting measures to achieve a specified harvest target.”

The letter also stated that “TC’s evaluation of past performance [of management measures] includes inherently uncertain estimates to predict future harvest estimates that are equally uncertain” noting that this “creates problems for truly validating the performance of measures,” and that in managing the recreational fishery “assumptions are made about data accuracy and precision . . . that are not true.” Despite this, the TC disagreed with New Jersey’s proposal because its proposed calculation methods contained “too much uncertainty” or “needed further refinement,” holding the State of a New Jersey to a standard the TC has not, itself, meet.

The Board received the TC memo and met via conference call on May 22, 2017 to review the report and consider final action on New Jersey’s measures. During that call, the Board determined that it would not accept New Jersey’s measures because total mortality is not equivalent to the reduction in harvest found in the Addendum. What the Board did not consider is New Jersey’s use of a different methodology to determine, not just the loss to the stock through harvest, but rather the entire loss to the stock – both harvested and dead discards – which more accurately accounts for mortality. The Board nevertheless passed a motion, over New Jersey’s objection, to reject New Jersey’s measures and to recommend finding New Jersey in non-compliance.

Following the Board’s action, on June 1, 2017, the Interstate Fishery Management Policy Board (ISFMP Board) met by telephone and recommended that the full ASMFC find New Jersey out of compliance. On that same day, the ASMFC met by telephone, despite New Jersey’s request for an in-person meeting, and found New Jersey out of compliance with the management measures contained in the Addendum to the FMP. The ASMFC then notified the Secretaries of Commerce and Interior of its findings by letter dated June 8, 2017.

### **III. New Jersey’s 2017 Summer Flounder Management Measures Adopted by DEP Prior to Start of the Season**

To meet the conservation measures required for summer flounder in 2017, on May 17, 2017 the New Jersey Marine Fisheries Council unanimously approved, and Commissioner Martin signed, summer flounder regulations for 2017.<sup>1</sup> New Jersey reduced the summer flounder season from 128 days to 104 days prior to the start of the season. The adopted regulations established:

- A minimum size of 18 inches;
- A 104-day season, to run from May 25, 2017 through September 5, 2017;
- A bag limit of 3 fish.

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<sup>1</sup> N.J.A.C. 7:25-18.1.

In addition, the Council retained from New Jersey's 2016 measures the 16-inch size limit and 2-fish possession limit at Island Beach State Park (IBSP) but shortened the season to 104 days, and retained the 17-inch size limit for Delaware Bay but reduced the season length to 104 days and the possession limit to 3 fish. New Jersey expects as in past years, a limited number of landings from both Delaware Bay and IBSP adding fewer than 8,000 fish total, or about 1% of all recreational landings in New Jersey. This is consistent with the conclusion reached by the TC, that: "... additional harvest from Delaware Bay and Island Beach State Park are likely to be minimal."

The differences between New Jersey's measures and the ASMFC's measures are the minimum size and season length. By maintaining an 18-inch minimum size and reducing the season length, New Jersey will prevent discard mortality from exceeding harvest mortality and thereby minimize the erosion in mortality savings through discards. The anticipated increase in harvest numbers due to an 18-inch minimum size will be sufficiently offset by the corresponding decrease in dead discards. The result will be a similar net reduction in overall fish mortality as compared with the overall fish mortality expected to result from a 19-inch minimum size.

In addition to these regulations, the State, through the DEP, is implementing an outreach program that draws heavily on the resources available from NOAA Fisheries' "FishSmart" program. This outreach program is expected to reduce our discard mortality below 10%. New Jersey will disseminate information at tackle shops, angling locations including marinas, and for-hire vessels. Further, New Jersey already has an email distribution list of more than 138,000 marine recreational anglers, which will be used to distribute hooking and handling protocols and an additional 14,000 followers on the Division's social media Facebook page.

Notably, the Technical Committee concluded that it was, "...in favor and supportive of New Jersey's proposal of conducting more angler education and outreach to help reduce recreational discard mortality, despite the inability to quantify the benefits specifically."

In addition to this extensive public outreach and education effort, New Jersey also will be distributing, at no charge, more than 20,000 large "j-hooks" throughout the state which research studies (cited immediately below) show will reduce discard mortality by reducing the potential for lethal damage to the undersized fish when removing the hook. Therefore, New Jersey expects that a larger hook size also will contribute to reducing discard mortality below 10%.

A Fairleigh Dickinson University study demonstrated that larger hook size reduces discard mortality. In addition, the Lucy and Holton (1998) study used for the 1998 stock assessment concluded that hook removal and hook setting practices could significantly reduce mortality. Furthermore, historical studies have shown a range of discard mortality between 5% and 23% with a mean of 7% achieved through hook size and handling variation.

Finally, New Jersey also plans to engage an accredited state university to track and study the impacts based on these actions. This will allow New Jersey to truly understand the impact and potential benefits of the outreach and education program.

#### IV. Atlantic Coastal Fisheries Cooperative Management Act Standards

Pursuant to the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. § 5106(a)1 and 2 (Atlantic Coastal Act), the Secretary is charged with making a finding as to whether New Jersey “has failed to carry out its responsibility under section 5104 of this title” and “if so, whether the measures that [New Jersey] has failed to implement and enforce are necessary for the conservation of the” summer flounder fishery. The 2017 summer flounder management measures that New Jersey has implemented comply with the FMP and conserve the summer flounder fishery better than would be achieved under the Addendum.

##### A. New Jersey’s Measures Implement and Enforce Measures that are Conservationally Equivalent to Addendum XXVIII and Thus are in Compliance with the FMP.

16 U.S.C. 5104 (b) requires New Jersey to implement and enforce measures of the applicable fishery management plan. Addendum XXVIII to the FMP directed New Jersey, New York, and Connecticut to implement the following measures for 2017: 19-inch minimum size, 128-day season, and a 3-fish possession limit. However, Framework Adjustment 2 of the FMP authorized the States, including New Jersey to adopt conservationally equivalent measures. Conservation equivalency is defined by the ISFMP Charter as

[a]ctions taken by a state which differ from the specific requirements of the FMP, but which achieve the same quantified level of conservation for the resource under management. One example can be, various combinations of size limits, gear restrictions, and season length can be demonstrated to achieve the same targeted level of fishing mortality (emphasis added).

By adopting an 18-inch minimum size, 104-day season, and 3-fish possession limit, New Jersey will reduce total fish mortality and ensure that the discard mortality rate does not exceed the harvest rate, which further conforms to one of the FMP’s primary objectives to reduce the fishing mortality of summer flounder. As such, New Jersey is implementing and enforcing measures that are the conservation equivalent of the ASMFC measures set forth in the Addendum and thus comply with the FMP.

There will be a positive biologically significant difference between what the ASMFC seeks to achieve through its requirements and what the State of New Jersey will achieve through its management measures because New Jersey’s approach will result in fewer dead fish. In fact, the regulation approved by the Council will instead reduce the overall mortality of the summer flounder stock when compared to those that the ASMFC would impose on the State. Accordingly, New Jersey has fulfilled its responsibility under the Atlantic Coastal Act to protect the summer flounder resource in accordance with the FMP.

Extensive analysis demonstrates that New Jersey’s regulations will achieve an estimated 21% reduction in harvest for the state.<sup>2</sup> In fact, the TC stated: “[a]fter reviewing the NJ proposal

<sup>2</sup> The estimated savings were calculated as follows:

- Season and possession limit reductions were applied to the New Jersey 2016 harvest to estimate 2017 harvest;
- Applying a discard-to-keeper ratio as reported through MRIP<sup>2</sup> of 8.1 for 18-inch fish and 12.1 for 19-inch fish, total catch was estimated by multiplying harvest by 8.1, total dead discards was

using final MRIP estimates and a 10% discard mortality rate and prior to evaluating discards during the closed season, the NJ option achieved a 21% total fishing mortality savings compared to the 18% total fishing mortality observed in Addendum XXVIII” (see Table 2). Thus, **New Jersey’s measures will reduce overall mortality, conserving a greater number of total fish than would the Addendum.**

Based on the final 2016 MRIP data, fewer than 8% of the fish caught in New Jersey’s 2016 recreational fishery were equal to or greater than 19 inches (Table 1). Assuming a 10% discard mortality rate used in summer flounder stock assessments since 1998,<sup>3</sup> discard mortality in New Jersey’s fishery would exceed harvest mortality under a 19-inch minimum size because the number of undersize fish anglers encounter will be greater than at 18 inches at a discard to keeper ratio of 12 to 1 rather than 8 to 1 (Table 2).

Such a large increase in discarded fish substantially impacts the estimated savings from the Addendum. Specifically, the 2016 stock assessment update indicated that fishing mortality exceeded the approved fishing mortality threshold by 26%.

The Addendum was developed to achieve a 30% reduction in harvest in the Connecticut-New York-New Jersey region to account for this excessive fishing mortality (F). However, when considering the increase in discard mortality associated with the increase in size limit from 18” to 19”, the savings in total fishing mortality in New Jersey would only be 14%, less than half of the required reduction in fishing mortality needed to meet the F threshold. (Table 2).

Furthermore, should New Jersey’s outreach and education initiative reduce discard mortality to 8%, we will have achieved a 27% total mortality savings compared to 2016. Although the exact percentage reduction in discard mortality cannot yet be determined with absolute certainty, the outreach and education efforts, as well as the use of the distributed hooks, will reduce discard mortality to some extent below 10%. Indeed, a recent survey analyzed by Montclair State University, which received responses from 26,000 anglers, found that 70% of those responding would “very likely”, or “absolutely”, change their angling or handling procedure voluntarily if it could reduce discard mortality. Therefore, even without the outreach and education components, and instead using only the 10% discard mortality rate, New Jersey’s measures will conserve more fish than the Addendum.

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calculated by subtracting harvest from total caught and multiplying the result by the discard mortality rate of 10%;<sup>2</sup>

- The total number of dead fish was then estimated by adding total harvest to total dead discards.
- Harvest and total mortality reductions were calculated relative to the 2016 observed values and projected harvest and total mortality under the Addendum.

<sup>3</sup> Early stock assessments incorporated a recreational release mortality of 25 %, but over time this value drew criticism for being too high (Terceiro 2002). SAW 25 (NEFSC 1997) included a research recommendation to investigate recreational release mortality for fluke. Three studies were completed in 1998 to investigate potential factors affecting release mortality, using both tank studies and field trials in North Carolina, Virginia, and New York. Average release mortality in each of the studies ranged from 6 % to 14 %. The average of these studies provides an estimate of 10 % recreational release mortality, which was adopted for the 1998 stock assessment update (Terceiro 2002) and used in all subsequent assessments.

**B. ASMFC's Specific Measures are not Necessary for Conservation Because New Jersey's Measures are More Protective of the Summer Flounder Fishery**

As discussed above, the management measures New Jersey has implemented for the 2017 summer flounder season achieve the conservation required for 2017 as required by 16 U.S.C. § 5104. However, if NOAA determines that New Jersey has not fulfilled its obligations under 16 U.S.C. § 5104, New Jersey's measures are effective in conserving the fishery under 16 U.S.C. § 5106(a)(2). New Jersey's measures are in fact, more protective than the measures ASMFC would have New Jersey implement as fully explained in Section A above.

In addition, it is important to note that the 19-inch size requirement imposed by ASMFC would be particularly damaging to New Jersey's summer flounder fishery. Data collected from 2010-2017 through the New Jersey Summer Flounder biological sampling program shows that the clear majority of fish of that length or greater in New Jersey waters are reproducing females.

Size	MALE	FEMALE
0-17 INCHES	46%	54%
18-30 INCHES	4%	96%
TOTAL	37%	63%

Consequently, anglers would be removing from the fishery the very fish capable of replenishing the stock. Therefore, again, because New Jersey's measures better conserve the fishery than ASMFC's measures, the exact management measures ASMFC is requiring of New Jersey are not necessary for conservation of the fishery.

**V. Despite the Technical Committee's Findings, New Jersey's Measures are Still Conservationally Equivalent and More Protective of the Fishery than Addendum XXVIII**

In finding that New Jersey's measures do not meet the conservational equivalence to the Addendum, the TC took issue with the following:

1. The TC found that New Jersey should have used MRIP data to evaluate the percentage reductions and to calculate the discard ratio;
2. The TC found that New Jersey's method ignores discards which occurred during the closed season and that New Jersey did not account for changes in discard mortality due to the shorter season in 2017;
3. Other States' regulations are implemented already and only New Jersey would be getting the benefit of this new measure.
4. The TC found that New Jersey's measures are inconsistent with the FMP requirement of constraining harvest to the annual recreational harvest limit (RHL).
5. The TC generally found that New Jersey's method requires further refinement and further evaluation of discards should consider the Annual Catch Limit (ACL).

As explained below, none of these points support the finding that New Jersey's measures do not achieve conservation equivalence to the Addendum.

1. The New Jersey VAS data was appropriate to evaluate the percentage reductions and to calculate the discard ratio. However, even using the MRIP data, New Jersey's

measures are still more protective of the summer flounder resource than ASMFC's measures because there are fewer dead fish based on New Jersey's calculation of total savings. Furthermore, MRIP data corroborates New Jersey VAS data.

2. Discards after a closed season have never been factored for reduction calculations in the past for this species complex (Summer Flounder, Scup, Black Sea Bass). MRIP data shows that discards drop significantly during the closed season. Further, there will be no open or available bottom fishery in New Jersey between the closed season of September 5 and October 22 when the NJ black sea bass season re-opens, which means there will be virtually no discards during this period because there will be no fishing permitted.
3. The timing of the consideration of New Jersey's measures was a function of the ASMFC process, which New Jersey followed. The same process applies to all states, and other states could, and some did, use the opportunities and process available under ASMFC rules.
4. New Jersey understands the TC's concerns regarding the FMP requirement to constrain harvest to the RHL, but New Jersey's approach demonstrates that implementing the Addendum will result in more dead discards harvested fish.
5. Comparing the recreational ACL and RHL presented in the Addendum yields a discard-to-kept ratio of only about 1.3 to 1. Although this estimate may be valid for some parts of the coast, the MRIP data shown in Table 1 indicates that New Jersey's discard ratios are much higher. Therefore, it would be less accurate for New Jersey to use a coastwide ACL to inform the discard rate for flounder locally.

#### **VI. The Technical Committee Recognizes the Value of New Jersey's Approach**

Although the TC did not accept New Jersey's methodology for calculating total mortality, it did find that the State's approach had considerable value.

- The TC concluded that New Jersey's "approach was unique and different from the standard methodology for developing measures as well as the FMP requirement of constraining harvest to the annual coastwide Recreational Harvest Limit (RHL)."
- The TC stated that it "...was in agreement that this [New Jersey's methodology] was a concept that was a potential improvement to the current approach of constraining coastwide harvest to the RHL...."
- The TC "...commend[ed] the NJ staff for providing a novel approach to incorporating discards and discard mortality into consideration for setting recreational measures."
- The TC noted that it "...has argued in favor of using a fishing mortality based approach for managing recreational fisheries, including taking into account the status of the resource" and that "reducing mortality associated with discarding may provide additional conservation benefits in helping the stock."
- The TC clearly stated that it "is interested in pursuing more of a fishing mortality based approach to recreational management relative to the current harvest limit-based management; it was noted that the Mid-Atlantic Fishery Management Council is current accepting proposals on this concept specifically for summer flounder."

Clearly, the Technical Committee, while acting within the narrow confines of the existing methodology, nevertheless recognized that New Jersey's unique approach has merit.

## **VII. Conclusion:**

The management measures New Jersey has implemented for the 2017 summer flounder season achieve a greater level of conservation for 2017 than does the Addendum. While the New Jersey measures do not achieve the required harvest reduction, the State's measures achieve a much greater biologically significant metric because they reduce total mortality of the population due to New Jersey anglers discarding fewer dead fish. Simply stated, New Jersey's proposed measures will conserve more fish, reduce the numbers of larger breeding females removed from the fishery (therefore providing stronger recruitment for the future), and reduce the economic, social, and cultural impact to the State of New Jersey.

Therefore, based on our analysis of the data provided in this memo, a 2017 size, season, and bag limit of 18-inches, 104 days, and 3 fish will achieve conservation equivalency for New Jersey's 2017 recreational summer flounder fishery.

In the final analysis, all interested parties are striving for the same thing – to preserve and manage our fisheries through responsible management processes. New Jersey's regulations are the more responsible approach to obtaining and achieving that goal and the State should, therefore, be found in compliance.

**Table 1. CATCH RATIOS** New Jersey ratio of fish released (B2) to fish kept (A+B1). The last two columns represent the average rate at which fish were kept and released under the 18 and 19 inch size bins during the 2016 fishing year.

Year	Wave	Observed Harvest (A)	Reported Harvest (B1)	Released Alive (B2)	DAYS	A+B1 FISH	18" FISH	2016 18" Released to Kept	2017 19" Released to Kept
2016	MAY/JUNE	127,191	32,345	1,060,560	39	159,536	49,281	6.6	10.1
2016	JULY/AUG	283,615	158,930	3,673,654	62	442,545	112,170	8.3	11.5
2016	SEPT/OCT	137,604	15,020	1,373,801	27	152,624	68,545	9.0	17.2
	TOTAL	548,410	206,295	6,108,015	128	754,705	229,996	8.1	12.1

**Table 2. Comparison of New Jersey 2017 summer flounder option and the ASMFC Option 5 in terms of total Mortality versus harvest reduction.**

Option	Total Caught	Total Dead Discards	Total Harvested	Total Dead (Harvested + Dead Discards)	Number of Fish Conserved Relative to ASMFC Addendum XXVIII	Total Mortality Savings Compared to NJ 2016 Regs	Total Mortality Change Compared to ASMFC Addendum XXVIII Measures
ASMFC Addendum XXVIII Measures	6,114,299	560,899	505,314	1,066,213	0	18%	0%
NJ 2017 Option (10% Discard)	4,852,159	425,313	599,032	1,024,345	41,868	21%	-4%
NJ 2017 Option (8% Discard)	4,852,159	340,250	599,032	939,282	126,930	27%	-8%

**Mid-Atlantic Fishery Management Council**

800 North State Street, Suite 201, Dover, DE 19901  
Phone: 302-674-2331 | FAX: 302-674-5399 | [www.mafmc.org](http://www.mafmc.org)  
Michael P. Luisi, Chairman | G. Warren Elliott, Vice Chairman  
Christopher M. Moore, Ph.D., Executive Director

June 26, 2017

Mr. John Bullard  
Regional Administrator  
NOAA Fisheries Service  
Greater Atlantic Regional Fisheries Office  
55 Great Republic Drive  
Gloucester, MA 01930-2276

Dear John:

Please accept these comments from the Mid-Atlantic Fishery Management Council (Council) regarding the Atlantic States Marine Fisheries Commission's (Commission's) determination of the State of New Jersey's non-compliance with the Summer Flounder, Scup, and Black Sea Bass Interstate Fishery Management Plan (FMP).

The Council concurs with the Commission's determination that the State of New Jersey is out of compliance with the FMP for not fully implementing and enforcing the provisions of Addendum XXVIII to the Commission's FMP. Because summer flounder is jointly managed by the Council and the Commission, the management actions of the Commission and member states are of critical importance to achieving the Council's management objectives and meeting regulatory requirements for the summer flounder fishery. In December 2016, the Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) jointly voted to manage the 2017 recreational summer flounder fishery under conservation equivalency, with individual states and multi-state regions implementing recreational measures that in combination would achieve, but not exceed, the 2017 recreational harvest limit (RHL), as required by the Council and Commission's complementary FMPs and federal summer flounder regulations. The Board adopted Addendum XXVIII to set minimum criteria for management measures to achieve the reduction in summer flounder recreational landings required under the jointly approved 2017 RHL.

The State of New Jersey's recreational measures do not fully implement the provisions of Addendum XXVIII, resulting in an increased likelihood that the 2017 RHL will be exceeded. This in turn leads to an increased likelihood that the recreational Annual Catch Limit (ACL) and overall Acceptable Biological Catch (ABC) will be exceeded. According to the most recent stock assessment update, summer flounder is currently experiencing overfishing, and is only 8% above the overfished threshold.<sup>1</sup> Thus, New Jersey's non-compliance raises conservation concerns, as the jointly approved reductions in catch and landings limits for 2017 were determined by the Council's Scientific and Statistical Committee to be necessary to end overfishing and reverse the declining trend in summer flounder biomass.

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<sup>1</sup> Terceiro M. 2016. Stock Assessment of Summer Flounder for 2016. US Dept Commer, Northeast Fish Sci Cent Ref Doc. 16-15; 117 p. Available from: National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543-1026, or online at <http://www.nefsc.noaa.gov/publications/>.

In addition, New Jersey's noncompliance threatens the integrity of the joint management process and may set a precedent for future noncompliant actions by Commission member states.

Please contact me or Chris Moore if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Luisi", written in a cursive style.

Michael Luisi  
Chairman, Mid-Atlantic Fishery Management Council

cc: C. Moore, S. Rauch, W. Elliott, R. O'Reilly, T. DiLernia, K. Dancy, E. Gilbert

RECEIVED

SEP 29 2017

ASMFC



UNITED STATES DEPARTMENT OF COMMERCE  
The Secretary of Commerce  
Washington, D.C. 20230

September 15, 2017

Mr. Douglas E. Grout  
Chairman  
Atlantic States Marine Fisheries Commission  
1050 North Highland Street, Suite 200A-N  
Arlington, VA 22201

Dear Mr. Grout:

My thanks for your letter requesting information on my decision regarding the Federal compliance review of the State of New Jersey's summer flounder management measures.

As you know, the Department of Commerce found the State of New Jersey compliant with the intent of the Commission's Summer Flounder, Scup, and Black Sea Bass Interstate Fishery Management Plan. As a result, a moratorium on summer flounder fishing in New Jersey state waters is not required.

It is my understanding that Chris Oliver, Assistant Administrator for Fisheries, met with you and other members of the Atlantic States Marine Fisheries Commission recently on July 31 to discuss that decision.

If you have any further questions, please contact Chris Oliver at (301) 427-8000.

Sincerely,

  
Wilbur Ross

cc: Mr. Robert E. Beal, Executive Director, Atlantic States Marine Fisheries Commission  
Mr. Michael Luisi, Summer Flounder Board Chair, Atlantic States Marine Fisheries Commission

## Atlantic Striped Bass

### Activity level: High

**Committee Overlap Score:** Medium (TC/SAS/TSC overlaps with BERP, Atlantic menhaden, American eel, horseshoe crab, shad/river herring)

#### Committee Task List

- TC – June 15<sup>th</sup>: Annual compliance reports due
- TC/SASC/TSC – All Year: benchmark stock assessment
  - Jan/Feb 2018: Modeling Workshop I
  - May 2018: Updated data submission for Assessment through 2017
  - July 2018: Modeling Workshop II
  - Sep 2018: Final SASC call/webinar to approve stock status determination
  - 1st week of Oct 2018: All Draft Report components due to staff
  - 2nd week of Nov 2018: Assessment Report due to external peer-review panel
  - 1st week of Dec 2018: Peer review

**TC Members:** Nicole Lengyel (RI, TC Chair), Kevin Sullivan (NH, Vice Chair), Alex Aspinwall (VA), Alexei Sharov (MD), Carol Hoffman (NY), Charlton Godwin (NC), Edward Hale (DE), Ellen Cosby (PRFC), Gail Wippelhauser (ME), Gary Nelson (MA), Heather Corbett (NJ), Jeremy McCargo (NC), Kurt Gottschall (CT), Luke Lyon (DC), Michael Kaufmann (PA), Peter Schuhmann (UNCW), Winnie Ryan, Gary Shepherd (NMFS), Steve Minkinen (USFWS), Wilson Laney (USFWS), Katie Drew (ASMFC), Max Appelman (ASMFC)

**SAS Members:** Edward Hale (DE, Chair), Gary Nelson (MA, Vice Chair), Alexei Sharov (MD), Hank Liao (ODU), Justin Davis (CT), Michael Celestino (NJ), John Sweka (USFWS), Gary Shepherd (NMFS), Katie Drew (ASMFC), Max Appelman (ASMFC)

**Tagging Subcommittee Members:** Stuart Welsh (WVU, Chair), Heather Corbett (NJ, Vice Chair), Angela Giuliano (MD), Beth Versak (MD), Chris Bonzak (VIMS), Edward Hale (DE), Gary Nelson (MA), Ian Park (DE), Jessica Best (NY), Carol Hoffman (NY), Gary Shepherd (NMFS), Josh Newhard (USFWS), Wilson Laney (USFWS), Katie Drew (ASMFC), Max Appelman (ASMFC)

# **Atlantic States Marine Fisheries Commission**

## *Interstate Fisheries Management Program Charter*



*Vision: Sustainably Managing Atlantic Coastal Fisheries*

February 2016

## **Preface**

This document outlines the standard operating procedures and policies of the Atlantic States Marine Fisheries Commission's Interstate Fisheries Management Program. It was first developed in response to passage of the Atlantic Coastal Fisheries Cooperative Management Act of 1993, which provided the Commission with responsibilities to ensure member state compliance with interstate fishery management plans. The Act authorizes the Secretary of Commerce to pre-empt any state fishery not in compliance with a Commission fishery management plan.

The Charter was first printed in April 1995 and subsequently revised in May 1996, October 2000, and November 2002. It was further edited in April 2001 (to reflect changes in the membership of the Atlantic Menhaden Management Board); July 2003 (to correct for incorrect references); January 2006 (to reflect a policy decision on voting by specific proxies); November 2008 (to reflect the addition of a habitat addendum provision); August 2009 (minor editorial changes); May 2013 (to reflect the Technical Support Group Guidance and Benchmark Stock Assessment Process Document). The last revisions were adopted in February 2016 to reflect current Commission practices regarding appealing noncompliance findings; defining final actions and two-thirds majority; public hearing requirements for public information documents, FMPs, amendments and addenda; the timing of advisory panel input on proposed management actions; and clarifying regional management council participation on species management boards that manage multiple species.

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## Section One. Introduction and Policy

(a) **General.** The Atlantic States Marine Fisheries Commission (Commission) was formed in 1942. The purpose of the Commission is:

*....to promote the better utilization of the fisheries, marine, shell and anadromous, of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause. It is not the purpose....to authorize the states joining herein to limit the production of fish or fish products for the purpose of establishing or fixing the price thereof or creating and perpetuating monopoly.*

(b) **Interstate Fisheries Management Program.** The Commission carries out an Interstate Fisheries Management Program (ISFMP), authorized by Article IV of the Commission's Rules and Regulations.

(c) It is the policy of the Commission that its ISFMP promote the conservation of Atlantic coastal fishery resources, be based on the best scientific information available, and provide adequate opportunity for public participation.

## Section Two. Role of the Commission

(a) **General.** The Commission is responsible generally for the Commission's fishery management activities. These activities will be carried out through the ISFMP established under this charter.

(b) **Final Approval Authority.** The Commission will be the final approval authority for:

- (1) Any fishery management plan (FMP) and FMP amendment; and
- (2) Any final determination of a state's non-compliance with the provisions of a Commission approved FMP.

## Section Three. ISFMP Policy Board

(a) **Membership.** The membership on the ISFMP Policy Board shall be comprised as follows:

- (1) All member states of the Commission shall be voting members, and shall be represented by all of its Commissioners (or duly appointed proxies) in attendance. The position of a state on any matter before the Policy Board shall be determined by caucus of its Commissioners in attendance;
- (2) One representative from the NOAA Fisheries and one representative from the U.S. Fish and Wildlife Service shall each be a voting member;

(3) One representative from the Potomac River Fisheries Commission and one representative from the government of the District of Columbia shall each be a member, eligible to vote, on any matter which may impose a regulatory requirement upon their respective jurisdictions; and

(4) One representative of the Commission's Law Enforcement Committee shall be a non-voting member.

(b) **Proxies.** Any Commissioner from a state, or duly authorized representative of a jurisdiction or agency, that is a member of the Policy Board may designate a permanent, ongoing, board or meeting specific proxy. A change in the designation of a permanent or ongoing proxy may be made only once during the year. In the case of extenuating circumstances, a Commissioner may appoint specific proxies as needed to ensure representation. Proxies must be from the same state, jurisdiction, or agency as the individual making the designation. The Commission's code of conduct shall apply to all proxies. Only an individual who is serving as a permanent or ongoing proxy may further designate a specific proxy.

(c) The **Chair and Vice-Chair** of the Commission shall respectively be the Chair and Vice-Chair of the ISFMP Policy Board.

(d) **Role and Functions.** The ISFMP Policy Board will be responsible for the overall administration and management of the Commission's fishery management programs. In this regard it will:

(1) Interpret and give guidance concerning the standards and procedures contained in Sections Six and Seven, and generally provide Commission policy governing the preparation and implementation of cooperative inter-jurisdictional fishery management for coastal fisheries of the Atlantic coast;

(2) Establish the priority species to be addressed by the Commission's fishery management program, taking into account the following criteria:

(i) The species constitutes a "coastal fishery resource" as defined in Section 803(2) of the Act;

(ii) The degree to which the species is of importance along the Atlantic coast; and

(iii) The probability that the species and associated fisheries will benefit from cooperative inter-jurisdictional management.

(3) Establish management boards/sections described in Section Four;

(4) Review and approve declarations of interest in species management by states according to the standards contained in the Commission Rules and Regulations;

- (5) Monitor and review the implementation of FMPs for which no management board or section is currently operational;
- (6) Review and approve action plans, including priorities for activities, for the ISFMP;
- (7) Establish, for any matter that does not come under the purview of an existing management board or section, a committee to provide it with any relevant analysis, reviews, and recommendations;
- (8) Recommend to the Commission that it make a determination of a state's non-compliance with the provisions of a Commission approved FMP, according to the procedures contained in Section Seven;
- (9) Consider and decide upon appeals of states to actions of any management board or section under Section Four(h); and
- (10) Take any other action that is consistent with this Charter and that is necessary and appropriate to carry out the fishery management program of the Commission; except that a final determination of a state's non-compliance with the provisions of a Commission-approved plan must be made by the Commission.

#### **Section Four. Management Boards**

- (a) **Fishery Management Board**. Upon determining that a need exists in a fishery for the development of an FMP or amendment, the ISFMP Policy Board shall establish a management board for that fishery. A management board may be disbanded by the Policy Board upon a determination that it is no longer needed for the preparation, review, or ongoing monitoring of the implementation of an FMP or amendment.
- (b) **Management Board Membership**. The voting membership of each management board shall be comprised as follows:
  - (1) Each state with an interest in the fishery covered by the management board shall be a voting member, and shall be represented by all of its Commissioners (or duly appointed proxies) in attendance. The position of a state on any matter before the management board shall be determined by caucus of its Commissioners in attendance;
  - (2) A representative from the Potomac River Fisheries Commission and the District of Columbia may each elect to serve as a voting member on any management board in which they have an interest or which may result in the imposition of regulatory requirements on their jurisdictions;
  - (3) NOAA Fisheries and the U.S. Fish and Wildlife Service may each elect to serve as a voting member of any management board; and

(4) Any one of the Executive Directors/Chairs of the Regional Fishery Management Councils may be invited to be a voting member of an ISFMP species management board when the management board determines that such membership would advance the inter-jurisdictional management of the specific species. When the management area includes more than one Council, the applicable Councils will need to identify one Executive Director/Chair to receive the invitation to participate on that board as a voting member. If a Council has been invited as a voting member of a Board/Section that manages multiple species, the Board/Section will designate which species can be discussed and voted on by the Council representative. A council staff member or member of the council may be appointed as a proxy for the Executive Director or Council Chair.

(c) **Proxies.** Any Commissioner from a state, or duly authorized representative of a jurisdiction or agency, that is a member of a management board may designate a permanent, ongoing, board specific or meeting specific proxy. A change in the designation of a permanent or ongoing proxy may be made only once during the year. In addition, a Commissioner may appoint specific proxies as needed to ensure representation. Proxies must be from the same state or jurisdiction or agency as the individual making the designation. The Commission's code of conduct shall apply to all proxies. Only an individual who is serving as a permanent or ongoing proxy may further designate a specific proxy.

(d) **Conduct of Meetings.**

(1) Meetings will generally be run according to the current edition of "Robert's Rules of Order."

(2) Any Commissioner or proxy of a Commissioner or duly authorized representative of a jurisdiction or agency that is a member of a management board may make or second any motion; provided that the maker of the motion and second (when necessary) must each come from a different state, jurisdiction, or agency.

(3) Any meeting specific proxy appointed by a Legislative or Governor's Appointee Commissioner may not vote on a final action being considered by a board, section, or committee. For this section a final action will be defined as: setting fishery specifications (including but not limited to quotas, trip limits, possession limits, size limits, seasons, area closures, gear requirements), allocation, final approval of FMPs/amendments/addenda, emergency actions, conservation equivalency plans, and non-compliance recommendations. A meeting specific proxy may participate in the deliberations of the meeting, including making and seconding motions. Meeting specific proxies may vote on preliminary decisions such as issues to be included in a public hearing draft or approval of public information documents. Questions of procedure will be determined by the chair of the meeting upon the advice of the Executive Director or the senior Commission employee in attendance.

(4) Advisory Panel Chairs will only be reimbursed to attend Commission meetings if the advisory panel met between board/section meetings to provide feedback on an issue.

(e) **Functions.**

(1) Each management board shall be responsible for the development of an FMP, amendment, or addendum with respect to the fisheries under its jurisdiction as established by the ISFMP Policy Board.

(2) Management boards/sections shall solicit public participation during the development of FMPs, amendments, or addenda.

(3) A management board may, after the necessary FMP, amendment, or addendum has been approved, continue to monitor the implementation, enforcement, and effectiveness of the FMP, amendment, or addendum or take other actions specified in the applicable document that are necessary to ensure its full and effective implementation.

(4) Each management board shall select its own chair and vice-chair. The chair of management boards/sections will rotate among the voting members every two years, with the vice-chair acceding to the chair.

(f) **Sections under Amendment One.** Under Amendment One to the Compact creating the Commission, one or more states may agree to designate the Commission as a joint regulatory agency; Commissioners of these states shall constitute a separate section for these purposes. In any such instance the following procedures apply:

(1) Agreements among states under Amendment One shall be in writing, and open to participation by all states with an interest in any fishery to which the agreement applies;

(2) All Commissioners from states forming a section under Amendment One shall be members of the section; and

(3) Regulatory authority exercised by the Commission under Amendment One shall be carried out pursuant to an FMP prepared according to this Charter. For these purposes, including determinations of non-compliance under Section Seven, a section shall have the same authority and responsibility as set forth in this Charter for a management board.

(g) **Coordination with Regional Fishery Management Councils.** Each management board shall work with appropriate committees of the Regional Fishery Management Councils and appropriate federal officials to insure that state and federal fishery management programs are coordinated, consistent, and complementary. It will be the policy of the Commission to develop FMPs jointly with Regional Fishery Management Councils wherever applicable

(h) **Appeal Opportunity.** Any state that is aggrieved by an action of the management board may appeal that action to the Policy Board, with the exception of a non-compliance finding in accordance with Section Three (d)(9).

## Section Five. Staff, Management, Technical, and Advisory Support

(a) **Staff Support**. The Commission's Executive Director or the ISFMP Director shall serve ex-officio as non-voting members of all management boards and sections. Commission staff shall serve as ex-officio members of all technical committees and will chair the plan development teams (PDTs) and plan review teams (PRTs). Staff will provide liaison among the PDTs, PRTs, species stock assessment subcommittees, technical committees, and advisory panels and the management boards/sections. Commission staff will also provide liaison among the Committee on Economics and Social Sciences, the Assessment Science, Habitat, Artificial Reef, Law Enforcement, and Management and Science Committees and the management boards/sections, and the Policy Board.

ISFMP and Science Program staffs have specific responsibilities with respect to supporting the activities of the technical support groups. These responsibilities are detailed in the [\*Technical Support Group Guidance and Benchmark Stock Assessment Process\*](#) (approved February 2016).

(b) **Committee Organization**. Unless otherwise specified, each group included in this section shall elect its own chair and chair-elect (or vice-chair), which shall rotate every other year among the Committee members, with the chair-elect acceding to the chair. Committees shall maintain a record of their meetings compiled by the chair-elect (vice-chair) in consultation with the chair and Commission staff.

(c) **PDTs** shall be appointed by the management boards/sections to draft FMPs, amendments and addenda.

(1) PDTs shall be comprised of personnel from state and federal agencies who have scientific and management ability, knowledge of a species and its habitat, and an interest in the management of a species under the jurisdiction of the relevant management board. Personnel from Regional Fishery Management Councils, academicians, and others as appropriate may be included on a PDT. The size of the PDT shall be based on specific need for expertise but shall generally be kept to a maximum of six persons.

(2) It shall be the responsibility of a PDT to prepare all documentation necessary for the development of an FMP, amendment, or addendum using the best scientific information available and the most current stock assessment information. Each FMP, amendment, or addendum shall be developed by the PDT in conformance with Section Six of the ISFMP Charter.

(3) PDTs shall be tasked directly by the management boards/sections. In carrying out its activities, the PDT shall seek advisement from the appropriate technical committee, stock assessment subcommittee, advisory panel, Committee on Economics and Social Sciences, and the Assessment Science, Habitat, Artificial Reef and Law Enforcement Committees, where appropriate.

(4) Following completion of its charge, the PDT will be disbanded unless otherwise determined by the board/section.

(d) **PRT** shall be appointed by the management boards/sections to review regulations and compliance. Members should be knowledgeable concerning the scientific data, stock and fishery condition, and fishery management issues. The PRT shall generally be kept to a maximum of six persons.

(1) PRTs will be responsible for providing advice concerning the implementation, review, monitoring, and enforcement of FMPs that have been adopted by the Commission, and as needed be charged by the management board/sections.

(2) Each PRT shall at least annually or as provided in a given FMP, conduct a review of the stock status and Commission member states' compliance for which implementation requirements are defined in the FMP. The PRT shall develop an annual plan review in order to evaluate the adequacy of the FMP. This report will address, at a minimum, the following topics: adequacy and achievement of the FMP goals and objectives (including targets and schedules), status of the stocks, status of the fisheries, status of state implementation and enforcement, status of the habitat, research activities, and other information relevant to the FMP. The PRT shall report all findings in writing to the management board/section for appropriate action. Compliance review shall be consistent with the requirements of Sections Six and Seven of the ISFMP Charter and the respective FMP requirements. In addition to the scheduled compliance reviews, the PRT may conduct a review of the implementation and compliance of the FMP at any time at the request of the management board/section, Policy Board, or the Commission. When a plan amendment process is initiated by the management boards/sections, the PRT will continue its annual review function applicable to the existing plan.

(3) In carrying out its activities, the PRT shall seek advisement from the appropriate technical committee, stock assessment subcommittee, advisory panel, Committee on Economics and Social Sciences, and the Assessment Science, Habitat, Artificial Reef Law Enforcement, and Management and Science Committees.

(e) **Assessment Science Committee.** The Assessment Science Committee (ASC) shall be appointed by the ISFMP Policy Board. All agencies should nominate individuals for appointment to the ASC based on stock assessment and population dynamics expertise. Agencies may nominate personnel that require some training prior to official appointment as a committee member. The ISFMP Policy Board should review all nominations and appoint members to the ASC based on expertise, as opposed to agency representation. The ISFMP Policy Board may appoint a limited number of ASC members that are currently being trained in stock assessment methods, with the intent of formalizing the appointment upon completion of training. ASC membership should be kept to a maximum of 25 members and periodic rotation of membership should be considered.

(1) ASC will assist the ISFMP Policy Board in setting overall priorities and timelines for conducting all Commission stock assessments in relation to current workloads.

(2) ASC will provide guidance to species stock assessment subcommittees, technical committees, and management boards on broad technical issues (e.g., stock assessment

methods, biological reference points, sampling targets, and other assessment issues common to multiple Commission-managed species).

(3) ASC may provide input and advice to the species stock assessment subcommittees mainly during a benchmark assessment, when a model change and/or a major revision of the data are conducted. The species stock assessment subcommittee will be responsible for conducting the species assessment and will report directly to the species technical committee. ASC may provide overall guidance to the development of the species assessment, but will not be involved in peer review of the assessment. Assessment updates will be conducted by the species stock assessment subcommittee, with input from the ASC upon written request.

(f) **Technical Committees.** A management board/section may appoint a technical committee to address specific technical or scientific needs requested periodically by the respective management board/section, PDT, PRT, or the Management and Science Committee.

(1) A technical committee shall be comprised of state, federal, Regional Fishery Management Council, Commission, university or other specialized personnel with scientific and technical expertise and knowledge of the fishery or issues pertaining to the fishery being managed, and should consist of only one representative from each state or agency with a declared interest in the fishery, unless otherwise required or directed by the management board.

(2) Technical committees are responsible for addressing specific technical or scientific needs requested periodically by the respective management board/section, PDT, PRT, or the Management and Science Committee. At times the board/section may task the technical committee to provide a technical analysis of species advisory panel recommendations. All requests to the technical committee should be in writing from the board/section chair and should include all specific tasks, the deliverable expected, and a timeline for presentation of recommendations to the board/section. Even though the technical committee may respond to requests from multiple committees, the management board/section provides the oversight to technical committee tasks and priorities. When tasked by multiple committees, it is the responsibility of the ISFMP staff in consultation with the technical committee and management board/section chairs to prioritize these tasks.

(3) It shall be the responsibility of a technical committee for addressing specific technical or scientific needs requested by the respective management board/section, PDT, and PRT in the development and monitoring of an FMP or amendment as requested, including evaluating fishery-dependent and fishery-independent data, evaluating state monitoring programs, and providing information on the status of the stock and the fishery to the PDT and PRT. At times the board/section may task the technical committee to provide a technical analysis of an advisory panel recommendation.

(4) Among its duties, the technical committee shall provide a range of management options, risk assessments, justifications, and probable outcomes of various management options.

(5) The technical committee will coordinate the process of developing stock assessments for Commission-managed species.

(6) It is not the responsibility of the technical committee to conduct a review of the Commission member states' compliance for which implementation requirements are defined in the FMP. This is a responsibility of the PRTs.

(g) **Species Stock Assessment Subcommittees.** Upon the request of a management board/section, the technical committee shall appoint individuals with appropriate expertise in stock assessment and fish population dynamics to a species stock assessment subcommittee, which will report to the technical committee and shall continue in existence so long as the management board/section requires.

(1) Membership to a species stock assessment subcommittee will be comprised of technical committee members with appropriate knowledge and experience in stock assessment and biology of the species being assessed. Individuals from outside the technical committee with expertise in stock assessment or biology of the species may also be nominated and appointed, if necessary. The technical committee chair will serve as an ex-officio member of the species stock assessment subcommittee. Overall membership should be kept to a maximum of six persons, unless otherwise required and directed by the management board/section.

(2) The species stock assessment subcommittee is responsible for conducting a stock assessment for use by the PDT in formulation of an FMP, amendment, or addendum; and conducting periodic stock assessments as requested for use by the technical committee in reporting status of the stock to the respective management board. A stock assessment update consists of adding the most recent years of data to an existing, peer-reviewed, and board-accepted stock assessment model without changing the model type or structure.

(3) The species stock assessment subcommittee is responsible for data analysis and preparation of a stock assessment report. Initial input on available data and stock assessment methods may be provided by ASC and technical committee. Additional input may be requested of the ASC upon written request of the species stock assessment subcommittee. The species stock assessment subcommittee shall use the best scientific information available and established stock assessment techniques. Stock assessment techniques should be consistent with the current state of scientific knowledge.

(4) The species stock assessment subcommittee will be tasked directly by the technical committee and will report to the technical committee for review and approval of work. All subcommittee recommendations and documents must be approved by the technical committee and forwarded by the technical committee to the management board/section. Any substantive issues and concerns raised by the technical committee during the

approval process should be referred back to the species stock assessment subcommittee to be addressed.

(h) **Other Technical Support Subcommittees** (e.g., tagging, stocking – with the exception of ISFMP socioeconomic subcommittees). Upon the approval of a management board/section, the technical committee shall appoint individuals with special expertise, as appropriate, to other technical support subcommittees in order to support technical committee deliberations on specific issues. All technical support subcommittees shall report to the technical committee and shall continue in existence so long as the management board/section requires. All technical support subcommittees should elect their own chair and vice-chair, who will be responsible for reporting to the technical committee. Overall membership should be kept to a maximum of six persons.

(1) Special subcommittees may be required to address specific scientific issues important to the assessment and management of the species. These subcommittees will be tasked directly by the technical committee and will report to the technical committee for review and approval of work. All subcommittee recommendations and documents must be approved by the technical committee before being forwarded to the management board/section. Any substantive issues and concerns raised by the technical committee during the approval process should be referred back to the technical support subcommittee to be addressed.

(i) **Advisory Panels**. A management board/section may at any time establish an advisory panel in conformance with the Commission's Advisory Committee Charter, to assist in carrying out the board's/section's responsibilities. Advisory panels shall also work with PDTs and PRTs, as requested. Advisory panel chairs should present reports to Boards/Sections and answer any specific questions relevant to their report. Chairs may not ask questions or present their own viewpoints during Board/Section deliberations. If the chair would like to present their own viewpoints, they must go to the public microphone during the public comment portion of the meeting.

(j) **Habitat Committee**. The Habitat Committee is a standing Commission committee appointed at the discretion of the Chair of the Commission. The purpose of the Habitat Committee is to review, research, and develop appropriate response to concerns of inadequate, damaged or insufficient habitat for Atlantic coastal species of concern to the Commission. Among its duties for the Commission, the Habitat Committee shall:

(1) Serve as a consultant to the ISFMP regarding habitat on which the species of concern to the Commission are dependent, whether salt, brackish or freshwater;

(2) Provide comment on the habitat sections of FMPs, and provide suggested text for these sections;

(3) Propose habitat mitigation measures, comment on proposed habitat mitigation measures, and proposed alternate measures if necessary to ensure appropriate habitat conservation;

(4) Establish subcommittees or other work groups as are necessary to research various habitat related issues; and

(5) Formulate habitat specific goals for consideration of and adoption by the Commission.

**(k) Artificial Reef Committee.** The Artificial Reef Committee is a standing Commission committee appointed at the discretion of the Commission Chair. The Committee advises the ISFMP Policy Board with the goal of enhancing marine habitat for fish and invertebrate species through the appropriate use of man-made materials. The Committee is comprised of the state artificial reef coordinators, representatives from NOAA Fisheries, and the U.S. Fish and Wildlife Service. The Artificial Reef Committee works in close coordination with Habitat Committee, and reports to the ISFMP Policy Board.

**(l) Law Enforcement Committee.** The Law Enforcement Committee (LEC) is a standing committee appointed by the Commission. LEC carries out assignments at the specific request of the Commission, the ISFMP Policy Board, the management boards/sections, the PDTs, and the PRTs. In general, the Committee provides information on law enforcement issues, brings resolutions addressing enforcement concerns before the Commission, coordinates enforcement efforts among states, exchanges data, identifies potential enforcement problems, and monitors enforcement of measures incorporated into the various interstate fishery management plans. LEC is comprised of law enforcement representatives from each member state, the U. S. Fish and Wildlife Service, NOAA Fisheries, the U. S. Coast Guard, and US Department of Justice. LEC convenes a working meeting in the spring, meets in conjunction with the Commission's Annual Meeting, and convenes other meetings as needed. Among its ISFMP duties, the LEC shall:

(1) Provide advice to PDTs regarding the enforceability of measures contemplated for inclusion in FMPs, including enforcement information needed for the Source Document and Background Summary pursuant to Section Six (b)(1)(v)(E); analysis of the enforceability of the proposed measures; and if the FMP provides for conservation equivalency, enforcement procedures for alternative management measures;

(2) Provide advice to each PRT at least annually or as provided in a given FMP regarding the adequacy and effectiveness of states' enforcement of the measures implemented pursuant to the FMP;

(3) Coordinate, among law enforcement personnel, the preparation of reports concerning state law enforcement and compliance in order to ensure these analyses are comparable; and

(4) Upon request or on its own initiative, provide enforcement advice and information regarding any FMP to any committee, team, board/section, or advisory panel in order to carry out activities under this Section.

(m) **Management and Science Committee.** The Management and Science Committee (MSC) is a standing committee appointed by the Commission. MSC carries out assignments at the specific request of the Commission, Executive Committee, or the ISFMP Policy Board, and generally provides advice to these bodies concerning fisheries management and the science of coastal marine fisheries. MSC is comprised of one representative from each member state, the NOAA Fisheries Greater Atlantic and Southeast Regional Offices, and the U.S. Fish and Wildlife Service's Regions 4 and 5 who possess scientific as well as management and administrative expertise. Among its duties for the Commission, MSC shall:

(1) Serve as the senior review body of the Commission, Executive Committee, and ISFMP Policy Board;

(2) Provide oversight to the Commission's Stock Assessment Peer Review Process;

(3) Upon request of the ISFMP Policy Board for any management board/section, review and provide advice on species specific issues;

(4) Evaluate the state of the science of species interactions and provide guidance to fisheries managers on multispecies and ecosystem issues. Evaluations and/or recommendations should focus on modifying the single-species approach in development of Commission FMPs and/or stock assessments;

(5) Evaluate and provide advice on cross-species issues and including, but not limited to tagging, invasive species and exotics, fish health and protected species issues; and

(6) Coordinate Commission technical and scientific workshops and seminars, when requested.

(n) **Committee on Economics and Social Sciences.** The Committee on Economics and Social Sciences (CESS) is a standing Commission committee. Committee membership is voluntary and preferably consists of a balance of economists and other social scientists knowledgeable about fisheries issues in their regions. An active base of members willing to help the CESS achieve their primary activities is a top priority, while ideally membership should be balanced geographically to provide coastwide representation. Up to twenty individuals should be maintained on the CESS. CESS members of the Committee shall be appointed at the discretion of the Chair of the Commission. The membership should consist of one representative from each member state, two representatives from NOAA Fisheries headquarters (one economist and one social scientist), one representative each from NOAA Fisheries Greater Atlantic and Southeast Regional Offices, one representative each from the Atlantic Coast Regional Fishery Management Councils, and one representative from the U.S. Fish and Wildlife Service.

The purpose of CESS is to provide socioeconomic technical oversight for both the ISFMP and

the Atlantic Coastal Cooperative Statistics Program. Among its duties for the Commission, CESS shall:

- (1) Develop and implement mechanisms to make economic and social science analysis a functioning part of the Commission's decision making process;
  - (2) Nominate economists and social scientists to serve on each species technical committee or socioeconomic subcommittee, and PDT, in order to provide technical support and development of socioeconomic sections of FMPs (including amendments and addenda);
  - (3) Upon request by species management boards or the Policy Board, provide social and economic advice, information, and policy recommendations to these respective boards;
  - (4) Upon request by the Policy Board, provide social and economic advice, information, and policy recommendations to the Policy Board;
  - (5) Provide technical recommendations to the social and economic data collection and data management programs of the Atlantic Coastal Cooperative Statistics Program;
  - (6) Function as the technical review panel for social and economic analyses conducted by the Commission and the Atlantic Coastal Cooperative Statistics Program; and
  - (7) Establish CESS subcommittees or other work groups as are necessary to research various social and economic issues;
- (o) **Other ASMFC Committees.** Other Commission committees, as appointed, shall upon request or on their own initiative provide advice and information to any other committee, in order to carry out activities under this Section.

## **Section Six. Standards and Procedures for Interstate Fishery Management Plans**

(a) **Standards.** These standards are adopted pursuant to Section 805 of the Atlantic Coastal Fisheries Cooperative Management Act (P.L. 103-206), and serve as the guiding principles for the conservation and management programs set forth in the Commission's FMPs. The Commission recognizes that an effective fishery management program must be carefully designed in order to fully reflect the varying values and other considerations that are important to the various interest groups involved in coastal fisheries. Social and economic impacts and benefits must be taken into account. Management measures should focus on conservation while allowing states to make allocation decisions. Fishery management programs must be practically enforceable, including as much as possible the support of those being regulated, in order to be effective. Above all, an FMP must include conservation and management measures that ensure

the long-term biological health and productivity of fishery resources under management. To this end, the Commission has adopted the following standards:

- (1) Conservation programs and management measures shall be designed to prevent overfishing and maintain over time, abundant, self-sustaining stocks of coastal fishery resources. In cases where stocks have become depleted as a result of overfishing and/or other causes, such programs shall be designed to rebuild, restore, and subsequently maintain such stocks so as to assure their sustained availability in fishable abundance on a long-term basis.
- (2) Conservation programs and management measures shall be based on the best scientific information available.
- (3) Conservation programs and management measures shall be designed to achieve equivalent management results throughout the range of a stock or subgroups of that stock.
- (4) Management measures shall be designed to minimize waste of fishery resources.
- (5) Conservation programs and management measures shall be designed to protect fish habitats.
- (6) Development and implementation of FMPs shall provide for public participation and comment, including public hearings when requested by the states.
- (7) Fairness & equity.
  - (i) An FMP should allow internal flexibility within states to achieve its objectives while implemented and administered by the states; and
  - (ii) Fishery resources shall be fairly and equitably allocated or assigned among the states.

(b) **Contents.** An FMP should be a readily available, concise, and understandable document. It is designed to inform the Commission and the public of the need for and nature of management action, to provide for conservation of coastal fisheries, to allow the public to have effective participation in the management planning process, and to help Commissioners to make decisions on fishery management plans. Additionally, the FMP should facilitate implementation and enforcement of the fishery management program in the individual states. With this in mind, all FMPs of the Commission shall contain the following items:

(1) Management Program Elements:

- (i) A statement of the problem being addressed by the FMP, and the objectives to be achieved through implementation, including the social and economic impacts.

(ii) The goals and objectives of the FMP, including a specification of the management unit, a plan-specific definition of overfishing when available, and, if a stock is determined to be depleted/overfished as a result of overfishing and/or other causes, a specific rebuilding program and schedule for the resource.

(iii) A statement of management strategies, options, and alternatives.

(iv) A complete statement of the management measures needed to conserve the fishery, including:

(A) A detailed statement on a state-by-state basis of each specific regulatory, monitoring, and research requirement that each state must implement in order to be in compliance with the plan; provided that the relative burden of the plan's conservation program and management measures may vary from state to state relative to the importance of the fishery in that state as compared to its importance in other states throughout its range; and provided that each FMP shall address the extent to which states meeting *de minimis* criteria may be exempted from specific management requirements of the FMP to the extent that action by the particular states to implement and enforce the plan is not necessary for attainment of the FMP's objectives and the conservation of the fishery;

(B) If the FMP so provides, procedures under which the states may implement and enforce alternative management measures that achieve conservation equivalency;

(C) A complete schedule by which states must take particular actions in order to be in compliance with the plan;

(D) A specification of the requirements for states' reports on compliance to be submitted to the PRT at least annually or as provided in a given FMP, including the requirement for submission within a specified time line of copies of relevant laws and regulations for the record; and

(E) A detailed description of penalties and repayments that will result if a state/jurisdiction does not implement any management measure consistent with the compliance schedule established in an FMP, amendment, or addendum.

(F) A statement of the minimum notification time that the Commission must provide a state/jurisdiction prior to requiring an in-season management adjustment; and establishment of a reporting and tracking system for management changes

(G) A statement of those recommendations which states should implement in order to conserve fishery resources.

(v) Supporting Summary Information and Analyses:

(A) A review of the resource and its biological status;

(B) A review and status of fish habitat important to the stocks, and ecosystem considerations;

(C) A review of the fishery and its status, including commercial and recreational fisheries and non-consumptive considerations;

(D) A review of the social and economic characteristics of the fishery; and

(E) An analysis of the enforceability of the proposed measures.

(vi) Impacts: A summary evaluation of the biological, environmental, social, and economic impacts of the requirements and recommendations included in the FMP.

(vii) Source Document: In addition to the FMP, the PDT and the staff shall compile a Source Document that contains all of the scientific, management, and other analyses and references utilized in preparation of the FMP.

(2) A management board/section, by two-thirds vote, may extend, after giving the public one month's notice, the period of effectiveness for any FMP or provision that would otherwise expire for a period of up to six months, and may be extended for an additional six months, if the management board/section is actively working on an amendment or addendum to address the provisions that would otherwise expire. A two-thirds majority will be defined by the entire voting membership, however any abstentions from the federal services would not count when determining the total number of votes.

(3) Adaptive Management: Each FMP may provide for changes within the management program to adapt to changing circumstances. FMPs, which provide for adaptive management shall identify specifically the circumstances under which adaptive management changes may be made, the types of measures that may be changed, the schedule for state implementation of changes, and the procedural steps necessary to effect a change. Changes made under adaptive management shall be documented in writing through addenda to the FMP. Addenda to the FMP must provide for a minimum of 30 days for public comment in making adaptive management changes. The management board/section shall in coordination with each relevant state, utilizing that state's established public review process, ensure that the public has an opportunity to review and comment upon proposed adaptive management changes.

(4) Technical Addenda: The management board/section may make technical corrections to an approved FMP, amendment, or addendum without use of the public review process. This flexibility is for the correction of accidental omissions, erroneous inclusions, and/or to address non-substantive editorial issues.

(5) Habitat Addenda: The management board/section may utilize the Adaptive Management (Section Six (b)(3)) to modify/update a habitat section contained in an FMP or Amendment. The modifications to the habitat section will be documented in writing through addenda to the FMP. The adaptive management procedures detailed in the FMP will be used when developing and approving a habitat addendum.

(c) **Procedures.** All FMPs and amendments of the Commission shall be prepared according to the following procedures:

(1) Need for an FMP - Identification of priority species by the Policy Board will initiate the process to create an FMP. A management board or section will be created pursuant to Section Four. The management board or section will appoint a PDT to develop the FMP for a particular species according to the process described in Section Five (c)(1) through (4).

(2) Need for FMP Amendment - Each PRT shall evaluate the adequacy of each respective FMP at least annually and will submit to the management board/section a written report of its findings. The report will address, at a minimum, the following topics: adequacy and achievement of the FMP goals and objectives (including targets and schedules); status of the stocks; status of the fisheries; status of state implementation and enforcement; status of the habitat; research activities; and other information relevant to the FMP. The PRT shall also solicit and consider the input of the relevant advisory panel, in preparation of its report. The PRT may recommend to the management board or section that a PDT be reinstated or convened. Using this information, the management board/section will determine whether the FMP needs amendment, including issues to be addressed, such as updating data, including results of new research or a new stock assessment, needed changes in state rules and/or enforcement, and recommended options and strategies to address the concerns. All Draft FMP Amendments shall be subject to the public comment process described under Section Six (c)(8), and shall be approved by the process described in Section Six (c)(4) through (7).

(3) Public Information Document (PID) - The species PDT shall prepare a PID containing a preliminary review of biological information, fishery issues, and potential management options for the subject FMP or amendment being prepared. The PDT shall also solicit and consider the advisement of the relevant advisory panel, if any, under the Commission's Advisory Committee Charter, in preparation of the PID. The PDT Chair (Commission staff) shall also prepare appropriate audio-visual material to accompany the PID for presentation to the public. The PID, after approval by the management board/section, shall be made available to each state with an interest in the fishery and where applicable, Regional Fishery Management Councils, for the purpose of soliciting public comment as described in Section Six (c)(8).

(4) Preparation of Source Document and Background Summaries - During review and consideration of the PID, the PDT will begin to collate and prepare the Source Document as provided in Section Six (b)(1) (vii). After consideration of the reviews of the PID, the PDT shall prepare background summaries as provided in Section Six (b)(1)(v).

(5) Preparation of Draft FMP or Amendment - After consideration of comments and views developed in response to the PID, the PDT, at the direction of the management board/section, will prepare a Draft FMP or Amendment. Upon approval by the management board/section, the Draft FMP shall be referred to all relevant states and, where applicable, Regional Fishery Management Councils, for the purpose of conducting public hearings and soliciting other public comment as described in Section Six (c)(8).

(6) Preparation of the final FMP or Amendment - After consideration of the record developed in receiving comment on the Draft FMP or Amendment, the PDT shall, at the direction of the management board/section, prepare the final FMP or Amendment.

(7) Review and Approval - The management board/section shall approve the FMP or Amendment or refer it back to the PDT for revision. The management board/section will approve revisions to established FMPs (amendment or addendum). Final approval of FMPs and amendments shall be the decision of the Commission.

(8) Advisory Panel Participation – The advisory panel may provide feedback to the board/section on FMPs/Amendments as described below. The board/section may seek additional guidance outside of the below process if necessary.

- (i) **During the development of the PID.** Advisory panels provide guidance to the PDT before the Board reviews the document for public comment.
- (ii) **During the development of the Draft FMP.** After the Board gives the PDT guidance on issues to include in the draft, advisory panels provide feedback to the PDT on those issues.
- (iii) **During the public comment of the Draft FMP.** Advisory panels meet to give recommendations on the public comment draft of the FMP.

(9) Public Participation:

(i) The management board/section shall in coordination with each relevant state, utilizing that state's established public review process, ensure that the public has an opportunity to review and comment upon the problems and alternative solutions addressed by the PID (see Section Six [c][3]). Upon completion of a PID and its approval by the management board/section, the Commission shall again utilize the relevant states' established public review process to elicit public comment on the PID. The Commission shall ensure that a minimum of three public hearings are held, including at least one in each state that specifically requests a hearing. A hearing schedule will be published within 60 days following approval of the PID; hearings may be held in conjunction with state agencies. The hearing document will be made available to the public for review and comment at least 30 days prior to the date of the first public hearing; availability will be announced by a press release issued by the Commission. Written comments will be accepted for 14 days following the date of the last public hearing.

(ii) Upon completion of a draft FMP or amendment and its approval by the management board/section, the Commission shall again utilize the relevant states' established public review process to elicit public comment on the draft. The Commission shall ensure that a minimum of three public hearings are held, including at least one in each state that specifically requests a hearing. A hearing schedule will be published within 60 days following approval of the draft FMP or amendment; hearings may be held in conjunction with state agencies. The hearing document will be made available to the public for review and comment at least 30 days prior to the date of the first public hearing; availability will be announced by a press release issued by the Commission. Written comments will be accepted for 14 days following the date of the last public hearing. The Commission will make the draft FMP or amendment and the accompanying PID widely available to the public, including fishermen, consumers, government agencies and officials, environmental groups, and other interested parties throughout the geographic range of the draft FMP or amendment. Records of the public hearings and summaries of the written comments will be made available at cost to anyone requesting them. Summaries of verbal and written comments will be prepared by Commission staff and provided to Commissioners, the management board/section, and advisory panel members. Copies of the summaries will be made available to other parties at cost.

(iii) Agendas for meetings of the management board/section, the ISFMP Policy Board, or the Commission, as appropriate, will include an opportunity for public comment prior to the board, section, or Commission taking action on a fishery management issue consistent with the public comment guidelines.

(iv) Public comments will be evaluated and considered prior to deciding what modifications will be made to the draft FMP or amendment, or draft final FMP or amendment, and prior to approval of the FMP or amendment consistent with the public comment guidelines.

(10) Administrative Record - The Commission staff, with support from the PDT, shall be responsible for collating and maintaining the administrative record for all FMPs.

(11) Emergencies - A management board/section may, without regard to the other provisions of Section Six (c), authorize or require any emergency action that is not covered by an FMP or is an exception or change to any provision in an FMP. Such action shall, during the time it is in effect, be treated as an amendment to the FMP.

(i) Such action must be approved by two-thirds of all voting members (a two-thirds majority will be defined by the entire voting membership, however any abstentions from the federal services would not count when determining the total number of votes) of the management board/section prior to taking effect. The decision may be made by meeting, mail, or electronic ballot in the case of an emergency.

(ii) Within 30 days of taking emergency action, the states and the Commission shall hold at least four public hearings concerning the action, including at least one in each state that requests it.

(iii) Any such action, with the exception of public health emergencies, shall originally be effective for a period not to exceed 180 days from the date of the management board/section's declaration of an emergency, but may be renewed by the management board/section for two additional periods of up to one year each, provided the board/section has initiated action to prepare an FMP, or initiated action to amend the FMP in accordance with Section Six(c). Emergency actions taken to address a public health emergency shall remain in effect until the public health concern ceases to exist (this determination to be made by the management board/section). The management board/section may terminate an emergency action at any time with approval of two-thirds of all voting members (i.e., entire membership).

(iv) Definition of Emergencies. The provisions of this subsection shall only apply in those circumstances under which public health or the conservation of coastal fishery resources or attainment of fishery management objectives has been placed substantially at risk by unanticipated changes in the ecosystem, the stock, or the fishery.

(12) Joint FMPs with Regional Fishery Management Councils - The Commission recognizes that fish species and fisheries are transboundary across state and federal jurisdictions, and that proper and efficient fisheries conservation can only be achieved by close coordination between state and federal management systems. The Commission is committed to close cooperation with the Regional Fishery Management Councils in providing for coordinated and compatible fisheries management. To this end, each management board shall work closely with appropriate Council committees to develop coordinated approaches to management.

(i) A management board may decide with a Regional Fishery Management Council to prepare an FMP jointly with that Council, with the intent that the Council and the Commission will approve the same FMP document. In such instances the management board and the Council will establish the specific procedures and schedules to follow during FMP development, including assignments of staff responsibilities on PDTs, technical committees and other fishery management program staffing and support groups, including advisory panels.

(ii) A management board shall endeavor whether or not a joint FMP is being prepared, to coordinate its meetings, meetings of the relevant advisory panel, and public hearings with relevant Council meetings and hearings.

## Section Seven. Compliance

(a) **Implementation and Enforcement** - All states are responsible for the full and effective implementation and enforcement of FMPs within areas subject to their jurisdiction. Each state shall submit a written report on compliance with required measures of a specific FMP in conformance with reporting requirements and schedules specified in the plan, which shall include submission of copies of relevant laws and regulations for the Commission's record. At any time, according to the procedures contained in this Section, the Commission may determine a state is not fully and effectively implementing and enforcing the required provisions of an FMP, and is therefore not in compliance with that plan. All evaluations, findings, and recommendations regarding compliance determinations shall be in writing.

(b) **Schedule for Reviews** - Implementation and compliance for FMPs will be reviewed according to the Commission's Action Plan. The schedule shall provide for review of each FMP at least annually, or more frequently as provided in a given FMP. In addition to the scheduled reviews, the PRT may conduct a review of the implementation and compliance of the FMP at any time at the request of the management board/section, Policy Board, or the Commission.

(c) **Role of the Management Board/Section** - Each management board/section shall, within 60 days of receipt of a state's compliance report, review the written findings of the PRT developed according to the previous subsection. Based upon that written review, as well as other information that it has or may receive, the management board/section may recommend to the Policy Board that a state be found out of compliance, including the rationale for the recommended finding of non-compliance. The recommendation shall specifically address the required measures of the FMP that the state has not implemented or enforced, a statement of how that failure to implement or enforce the required measures jeopardizes the conservation of the resource, and the actions a state must take in order to comply with requirements of the FMP.

(d) **Role of the Policy Board** - The Policy Board shall, within 30 days of receiving a recommendation of non-compliance from a management board/section, review that recommendation of non-compliance. If it concurs in the decision, it shall recommend at that time to the Commission that a state be found out of compliance. A recommendation regarding non-compliance from the Policy Board will be submitted to the Commission in writing provided there is sufficient time between meetings to develop such documentation.

(e) **Review and Determination by the Commission** - The Commission shall consider any recommendation forwarded under Subsection(d), as quickly as possible and within 30 days of receiving a recommendation of non-compliance from the Policy Board. Any state which is the subject of a recommendation for a finding of non-compliance shall be given an opportunity to present written and/or oral testimony concerning whether it should be found out of compliance. The state may request that the Commission's consideration be held at a formal meeting by roll call vote. With the consent of the Commissioners from the state subject to the recommendation, the Commission's decision may be made by electronic ballot. If the Commission agrees with the recommendation of the Policy Board, it may determine that a state is not in compliance with the relevant FMP, and specify the actions the state must take to come into compliance. Upon a non-compliance determination, the Executive Director shall within ten working days notify the

state, the Secretary of Commerce, and the Secretary of the Interior of the Commission's determination.

(f) **Withdrawal of Determination** - Any state subject to a moratorium that has revised its conservation program in response to a determination of non-compliance may request that the Commission rescind its findings of non-compliance.

(1) If the state provides written documentation to the Commission of implementation of every measure required of it, the withdrawal will be automatic upon issuance of a letter from the Commission Chair to the state, Secretary of Commerce, and the Secretary of the Interior.

(2) If the measures implemented deviate from those required of the state, the state shall provide a written statement on its actions that justify a determination of compliance. The management board/section shall promptly conduct such re-evaluation and make a recommendation to the Policy Board that the recommendation or determination of non-compliance be withdrawn. Upon the recommendation of the Policy Board, the Commission may withdraw its determination of non-compliance, whereupon the Executive Director shall promptly notify the state, the Secretary of Commerce, and the Secretary of the Interior. The re-evaluation by the Management board/section, review by the Policy Board, and action by the Commission shall be made within 45 days of the receipt by the Commission of the request for reconsideration by the State. It may be made by electronic ballot with the consent of the Commissioners from the subject state.

(g) **Procedure to Address Management Program Implementation Delays** - Each species management board shall evaluate the current FMP, amendment, and/or addendum to determine if delays in implementation have impacted, or may negatively impact, the achievement of the goals and objectives of the management program. Each of the species management boards, with the assistance of the respective technical committee if necessary, will conduct this evaluation and provide, in writing, a summary of its findings to the ISFMP Policy Board. Each species management board that determines that there is a negative impact due to delayed implementation will provide the ISFMP Policy Board a proposed timeline to develop an amendment or addendum to address delayed implementation.

If the ISFMP Policy Board determines that an amendment or addendum should be developed to address delayed implementation, the amendment or addendum should, at a minimum, include any penalties and repayments for delays in implementation, the minimum notification time that Commission staff must provide a state/jurisdiction prior to requiring an in-season management adjustment; and establishment of a reporting and tracking system for management changes.

## Section Eight. Definitions

(a) **Act** - The Atlantic Coastal Fisheries Cooperative Management Act, 1993. 16 U.S.C. Chapter 71, et seq.

(b) **Action plan** - A document prepared annually by Commission staff and approved by the Policy Board to provide priorities and schedules for the specific activities of the ISFMP during a given year.

(c) **Adaptive management** - An iterative process which includes evaluation of the response of the managed fishery and stock to specific management measures and adjusting such measures based on that evaluation.

(d) **Advisory Panel (AP)** - A group of interested and knowledgeable persons convened under the Commission's Advisory Committee Charter to assist in development of an FMP or amendment.

(e) **Assessment Science Committee (ASC)** - A group consisting of experts in fish population dynamics and appointed and convened by a Technical Committee, at the request of a Management Board, to prepare a stock assessment for a specified fish stock using the best scientific data available and established techniques.

(f) **Best scientific information available** - Includes but is not limited to that body of biological, environmental, ecological, economic, and social data concerning the fish stock and fisheries which are the subject of an FMP or amendment, provided that the methods of collecting such information are clearly described and are generally accepted as scientifically valid. Data may come from state, federal, or private databases and from published and unpublished sources. Information that becomes available during preparation of an FMP or amendment should be incorporated to the extent practicable.

(g) **Bycatch** - That portion of a catch taken in addition to the targeted species because of non-selectivity of gear to either species or size differences; may include non-directed, threatened, or endangered and protected species.

(h) **Compliance** - Condition in which a state has implemented and is enforcing all measures required by an FMP. States are presumed to be in compliance unless determined to be out of compliance pursuant to Section Seven.

(i) **Conservation** (from the Act, Section 803[4]) - The restoring, rebuilding, and maintaining of any coastal fishery resource and the marine environment, in order to assure the availability of coastal fishery resources on a long-term basis.

(j) **Conservation equivalency** - Actions taken by a state which differ from the specific requirements of the FMP, but which achieve the same quantified level of conservation for the resource under management. For example, various combinations of size limits, gear restrictions, and season length can be demonstrated to achieve the same targeted level of fishing mortality. The appropriate Management Board/Section will determine conservation equivalency.

(k) **Conservation program** - Enactment of rules or statutes, research, biological monitoring, collection of statistics, stock enhancement, and enforcement activities conducted by a state to maintain, restore, and/or rebuild a fish stock and its habitat.

(l) **De minimis** - A situation in which, under existing conditions of the stock and 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.

(m) **Directed fishery** - Fishing for a stock using gear or strategies intended to catch a given target species, group of species, or size class.

(n) **Emergency** - Unanticipated changes in the ecosystem, the stock, or the fishery which place public health, the conservation of coastal fishery resources, or attainment of fishery management objectives substantially at risk.

(o) **Endangered, threatened, or protected species** – Species that are regulated under the jurisdiction of the federal or a state’s endangered species act (threatened or endangered) or are provided other special protection.

(p) **Fish** (from the Act, Section 803[7]) - "Finfish, mollusks, crustaceans, and all other forms of marine animal life other than marine mammals and birds."

(q) **Fishable abundance** - Numbers of fish in a stock sufficient to provide continuing harvests in the range of historic average levels without overfishing the stock.

(r) **Fishery** (from the Act, Section 803[8])

(1) "One or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, commercial, recreational, or economic characteristics; or

(2) Any fishing for such stocks."

(s) **Fish habitat** - The environment upon which a fish stock is dependent as it conducts its normal life history functions of spawning, feeding, and migration; including biological, physical, and chemical factors which influence the choices of such areas.

(t) **Fishery management** - All activities conducted by a government to improve, restore, rebuild, or maintain fish stocks and fisheries, including statutory action and rule-making, enforcement, research, monitoring, collection of statistics, enhancement, protection, development, and habitat conservation.

(u) **Habitat Committee (HC)** - The principal body, established by the Commission, which advises the Commission on issues of habitat, habitat management, habitat requirements by the managed species, enforceability of proposed habitat management measures.

- (v) **Implementation of an FMP** - Conducting a state conservation program that meets all requirements for that state as provided in an FMP or amendment.
- (w) **Law Enforcement Committee (LEC)** - The principal body, established by the Commission, which advises the Commission on issues of law enforcement and enforceability of potential management measures, comprised of representatives of each member state, Washington, D.C., NOAA Fisheries, U.S. Fish and Wildlife Service, and the U.S. Coast Guard.
- (x) **Management measure** - A statute or rule enacted by a state to conserve a fishery and/or protect its habitat.
- (y) **Management and Science Committee (MSC)** - The principal scientific advisory body of the Commission, comprised of representatives from member states, NOAA Fisheries, and U. S. Fish and Wildlife Service.
- (z) **Minimize waste** - Process of taking specific actions, which reduce the effects of fishing activities on non-target resources (habitat and bycatch) and promote full, efficient utilization of the catch.
- (aa) **Non-compliance** - A condition under which the Commission has determined that a state has failed to implement and enforce a conservation program as required in an FMP or amendment.
- (bb) **Non-indigenous species** - A species of fish, plant or other organism that is not native to a particular geographic area.
- (cc) **Overfishing** - In the context of the ISFMP, harvesting from a stock at a rate greater than the stock's reproductive capacity to replace the fish removed through harvest. Each FMP contains a plan-specific definition of overfishing.
- (dd) **Plan Development Team (PDT)** - A group of individuals who are knowledgeable concerning the scientific facts and fishery management issues concerning a designated fish stock and who are appointed and convened by a Management Board to prepare an FMP or amendment and its supporting Source Document.
- (ee) **Plan review** - An evaluation of an FMP, considering adequacy and relevance of the goals and objectives, stock status, fishery status, implementation status, research activities, and recommendations.
- (ff) **Plan Review Team (PRT)** - A group of individuals who are knowledgeable concerning the scientific facts, stock and fishery condition, and fishery management issues concerning a designated fish stock and who are appointed and convened by a Management Board for the purpose of conducting an annual plan review for an FMP.
- (gg) **Public Information Document (PID)** - A document of the Commission which contains preliminary discussions of biological, environmental, social, and economic information, fishery issues, and potential management options for a proposed FMP or amendment.

(hh) **Range (functional)** - The geographic area utilized by a fish stock and its dependent fishery as defined in an FMP.

(ii) **Recommendations** - Actions identified in an FMP which should be taken by the states, but are not required, such as enactment of rules, research, monitoring, collection of statistics, and enhancement, which collectively will promote restoration, rebuilding, or maintenance of a stock.

(jj) **Regulatory** - Of or pertaining to any administrative or legislative measure in a sense that requires compliance by individuals involved in the fishery.

(kk) **Requirements** - Actions set forth in an FMP which must be taken by the states specified in such FMP, such as enactment of rules, research, monitoring, collection of statistics, and enhancement, which collectively will promote attainment of the FMP's objectives for restoration, rebuilding, or maintenance of a stock, and are the measures against which compliance is judged. Failure of a specified state to implement a required action may result in a finding of non-compliance under the Act.

(ll) **Source document** - The comprehensive support document to an FMP which is compiled by the Plan Development Team and Commission staff and contains all the scientific, management, and other analyses and references utilized in preparation of the FMP; the Source Document is kept on file with the Commission.

(mm) **State** - (from the Act, Section 803[13]) For purposes of the Act, one of the following East Coast jurisdictional entities: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Florida; also includes the District of Columbia, or the Potomac River Fisheries Commission.

(nn) **Stock** - A group of fish of the same species which behave (spawn, migrate, feed) as a unit.

(oo) **Subgroup** - A group of fish from the same stock which consistently conducts itself as an identifiable unit.

(pp) **Target species** - A species or group of species of fish which certain fishing gear or strategies are designed to catch.

(qq) **Technical Committee (TC)** - A group of persons who are expert in the scientific and technical matters relating to a specific fish stock and who are appointed and convened by a Management Board to provide scientific and technical advice in the process of developing and monitoring FMPs and amendments.

(rr) **Trigger** - A measure of a specific attribute of a fish stock or fishery for which values above or below an established level initiates a pre-specified management action.