

# Atlantic States Marine Fisheries Commission

## Executive Committee

*February 7, 2018  
8:00 – 9:30 a.m.  
Arlington, Virginia*

## Draft Agenda

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

*A portion of this meeting may be a closed session for Committee members and Commissioners only*

1. Welcome/Call to Order (*J. Gilmore*)
2. Committee Consent
  - Approval of Agenda
  - Approval of Meeting Summary from October 2017
3. Public Comment
4. Atlantic Coastal Cooperative Statistics Program Update
5. Review Leadership Nominating and Election Process
6. Review Indirect Cost Rate
7. Review Appeals Process
8. Review Conservation Equivalency Process
9. Other Business/Adjourn

***Please Note: Breakfast will be served when you arrive; you may arrive as early as 7:30 a.m.***

The meeting will be held at the Westin Crystal City, 1800 Jefferson Davis Highway Arlington, Virginia; 703.486.1111

**MEETING SUMMARY OF THE  
ATLANTIC STATES MARINE FISHERIES COMMISSION  
EXECUTIVE COMMITTEE**

**Norfolk Waterside Marriott  
Norfolk, VA  
October 18, 2017**

## INDEX OF MOTIONS

- 1. Approval of Agenda by Consent. (Page 2)**
- 2. Approval of Meeting Summary from August 1, 2017 by Consent. (Page 2)**
- 3. Approval of the FY17 Audit (page 2)**
- 4. Adjournment by Consent (Page 3)**

## **ATTENDANCE**

### **Committee Members**

Pat Keliher, ME	Roy Miller, DE (GA Chair)
Doug Grout, NH	Andy Shiels, PA
Dennis Abbott, NH (LA Chair)	David Blazer, MD
David Pierce, MA	John Bull, VA
Craig Miner, CT	Michelle Duval, NC (proxy for Braxton Davis)
Jason McNamee, RI	Robert Boyles, SC
Jim Gilmore, NY	Spud Woodward, GA
Russ Allen, NJ	Jim Estes, FL
John Clark, DE	

### **Other Commissioners**

Mark Alexander, CT (AA)  
David Borden, RI (GA)  
Ed O'Brien, MD (LA proxy)  
Ritchie White NH (GA)

### **Staff**

Bob Beal	Toni Kerns
Pat Campfield	

### **Others**

John Bullard, NOAA Fisheries	Chip Lynch, NOAA Fisheries
Lindsay Fullenkamp, NOAA Fisheries	Sherry White, USFWS
Derek Orner, NOAA Fisheries	Mike Millard, USFWS
Chris Wright, NOAA Fisheries	

## **CALL TO ORDER**

The Executive Committee of the Atlantic States Marine Fisheries Commission convened in the Marriott I-III Room of the Norfolk Waterside Marriott in Norfolk, Virginia October 18, 2017. The meeting was called to order at 8:00 a.m. by Chair Doug Grout.

## **APPROVAL OF AGENDA**

The agenda was approved as presented.

## **APPROVAL OF PROCEEDINGS**

The summary minutes from the August 1, 2017 meeting were approved as presented.

## **PUBLIC COMMENT**

There was no public comment.

## **FY17 AUDIT**

Staff presented the FY17 Audit. We used a new auditing firm this year, Dixon, Hughes, Goodman, LLP and they did an excellent job. It was noted that revenue is up due to cooperative NMFS/ASMFC projects, but the ACFCMA cooperative agreement has not increased. It was also noted that the three findings from the 2016 Audit were resolved to the satisfaction of the National Marine Fisheries Service and no further action was necessary. On behalf of the Administrative Oversight Committee, Mr. Gilmore moved to approve the FY17 Audit and the motion passed unanimously.

## **TECHNICAL MEETING WEEKS**

Staff suggested to the Executive Committee that Technical Committee (TC) Meeting Weeks may have lost their purpose & usefulness in recent years. Staff was

directed to survey TC members to receive feedback on the effectiveness of meeting weeks. It seemed that TC members felt meeting weeks were helpful in providing structure and planning horizons, and provided opportunities to network and collaborate with members of other Technical committees. The Executive Committee directed staff to schedule TC Meeting Weeks in the spring and summer and plan out as many long term meetings as possible and communicate those meetings at the start of the year.

## **QUARTERLY MEETING SCHEDULE**

The Executive Committee discussed the scheduling of the quarterly meetings to determine if too much work is being packed into too short of time. Some suggested solutions to this perceived issue were to limit the number of major actions being considered at each meeting; expand the length of meetings where allocation issues are discussed; lengthen the Winter and Summer Meeting weeks to 4 full days. The Executive Committee directed staff to provide Roberts Rules training every 2-3 years; to work more closely with Board Chairs on the timing of each agenda item, and to use subcommittees to provide recommendations which has often resulted in quicker and better decisions.

## **STRATEGIC PLAN 2019-2023**

Development of the Commission's next Strategic Plan was discussed, with one question asked whether or not the plan should be 5 years or a shorter time frame. The political landscape changes quickly and it was suggested the plan could reflect this.

Pros and cons were noted for a shorter time frame, including there may be enough time to address the issues at hand in just 2 years. It was noted more philosophical topics like conduct and cooperation should be a strong influence in the plan. It should also be acknowledged that we are not always able to fully restore a species within a given timeframe. Therefore, another metric to show progress/performance may be needed. The Committee agreed to schedule time at the February Meeting Week for brainstorming and plan the course for updating the plan. The timeline is to approve the final plan at the Annual meeting in New York. In February there may be MSRA language which could influence how the Commission moves forward. Issues may need to be broader to be able to better respond to the ever changing political nature of today.

#### **OFFICER NOMINATION PROCESS**

Concerns were raised regarding the nomination process for Commission Chair and Vice Chair this year. Nomination solicitation is split by region and conducted by a different person in each region. Some areas contacted all commissioners and others only contacted the Administrative Commissioners.

The process should ensure all of the commissioners are contacted. Each person on the nomination committee addressed the issue in their own way. In the end all commissioners were contacted, some just relied on the state director to talk with the 2 other Commissioners. It was suggested the language should be clarified on how the nominating committee should be working.

A question was raised: should the delegation give a collective recommendation or should there be individual recommendations? Part of the role of the nominating committee member is to vet information that others may not know, e.g. A potential candidate is going to retire. Who is eligible to serve as chair and vice-chair? The guidelines should clarify who can serve in a leadership role. The Committee agreed to develop a white paper on this issue for review at the February meeting. Questions the white paper should address: Does each commissioner get queried? State director do the query? Consensus? Individual? A combo of these?

#### **ADJOURN**

CHAIR DOUG GROUT adjourned the Executive Committee meeting at 10:00 a.m.

## Atlantic States Marine Fisheries Commission

### **APPEALS PROCESS**

Approved by the ISFMP Policy Board

August 18, 2004

#### **Background**

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

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

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

This paper details for the Commission appeals process.

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

1. Decision not consistent with FMP
2. Failure to follow process
3. Insufficient/inaccurate/incorrect application of technical information
4. Historical landings period not adequately addressed

5. Management actions resulting in unforeseen circumstances/impacts

The following issues could not be appealed:

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

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

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

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

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



alternate if necessary, as described above) may set a deadline for the Committee to complete its work to ensure the appeal is addressed in a timely manner.

**ISFMP Policy Board Meeting** –Following the determination that an appeal has met the qualifying guidelines, a meeting of the Policy Board will be convened at a scheduled ASMFC meeting week. The agenda of this meeting will be set to allow sufficient time for all necessary presentations and discussions. The Chair of the Commission will serve as the facilitator of the meeting. If the Chair is unable to attend the meeting or would like to more fully participate in the deliberations, the Vice-Chair of the Commission will facilitate the meeting. The ISFMP Director will provide the background on the development of the management program as well as a summary of the justification provided in the record for the management board’s action. The ISFMP Director will also present the potential impacts of the appeal on other affected states. The appellant Commissioners will present their rationale for appealing the decision and provide a suggested solution. The Policy Board will then discuss the presentations and ask any necessary questions. The Board will vote to determine if the management board’s action was justified. A simple majority of the Policy Board is required to forward a recommendation to a management board for corrective action. If the Policy Board determines that the existing management program should be modified, it will issue a finding to that effect as well as any guidance regarding corrective action to the appropriate species management board. The referral may be worded to allow the management board flexibility in determining the details of the corrective action.

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

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

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

**Limiting Impacts of Appeal Findings** – If a state is successful in an appeal and the management program is altered, another state may be negatively impacted by the appeals decision. In order to prevent an appeals “chain reaction,” the Policy Board’s recommendation and the resulting management board’s decision will be binding on all

states. All states with an interest in the fishery will be obligated to implement the changes as approved by the management board. Upon completion of the appeals process, a state is not precluded from taking further action beyond the Commission process to seek relief.

If the Policy Board supports the appeal and determines that corrective action is warranted, the potential for management changes to negatively impact other states will be evaluated by the Policy Board and the species management board.

### **Appeals Process Timeline**

1. Within **15 working days** of receipt of a complete appeal request the Commission Chair, Vice-Chair, and immediate past chair (or alternate) will determine if the state has an appeal which meets the qualifying guidelines.
2. Upon a finding that the appeal meets the qualifying guidelines, the appeal will be included on the agenda of the ISFMP Policy Board meeting scheduled during the next ASMFC Meeting Week (provided an adequate time period is available for preparation of the necessary documentation).
3. Following the finding that an appeal meets the qualifying guidelines, Commission staff and the appellant commissioners will have a minimum of **15 working days** to prepare the necessary background documents.
4. The background documents will be distributed at least **15 days** prior to the Policy Board meeting.
5. A summary of the Policy Board meeting will be developed and distributed to all Commissioners within **15 working days** of the conclusion of the meeting.

# Atlantic States Marine Fisheries Commission

## CONSERVATION EQUIVALENCY: Policy and Technical Guidance Document



First Edition Approved May 2004  
Revised and Approved October 2016

## **Introduction**

The purpose of this document is to provide policy and technical guidance on the application of conservation equivalency in interstate fisheries management programs developed by the Atlantic States Marine Fisheries Commission. The document provides specific guidance on development, submission, review and approval of conservation equivalency proposals.

## **Background**

The Atlantic States Marine Fisheries Commission (ASMFC) employs the concept of conservation equivalency in a number of interstate fishery management programs.

Conservation equivalency allows states/jurisdictions (hereafter states) flexibility to develop alternative regulations that address specific state or regional differences while still achieving the goals and objectives of Interstate Fishery Management Plans (IFMPs). Allowing states to tailor their management programs in this way avoids the difficult task of developing one-size-fits-all management measures while still achieving equivalent conservation benefits to the resource.

Conservation equivalency is currently defined in the Interstate Fisheries Management Program (IFMP) Charter as:

*“Actions taken by a state which differ from the specific requirements of the IFMP, 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. The appropriate Management Board/Section will determine conservation equivalency.” The application of conservation equivalency is described in the document Conservation Equivalency Policy and Technical Guidance Document*

In practice, the ASMFC frequently uses the term “conservation equivalency” in different ways depending on the language included in the plan. Due to concerns over the lack of guidance on the use of conservation equivalency and the lack of consistency between fishery management programs, the IFMP Policy Board approved a policy guidance document on conservation equivalency in 2004. Since 2004, some of the practices of the Commission regarding conservation equivalency have changed. The revisions to this document reflect current Commission practice.

## **General Policy Guidance**

The use of conservation equivalency is an integral part of the Commission management process. Conservation equivalency is used in 2 ways: (1) in the development of the IFMP (including implementation plans) and (2) as alternative management programs outside of the IFMP process.

During the development of a management document the Plan Development Team (PDT) should recommend if conservation equivalency should be permitted for that species. The board should provide a specific determination if conservation equivalency is an approved option for the

fishery management plan, since conservation equivalency may not be appropriate or necessary for all management programs. The PDT should consider stock status, stock structure, data availability, range of the species, socio-economic information, and the potential for more conservative management when stocks are overfished or overfishing is occurring when making a recommendation on conservation equivalency. During the approval of a management document the Board will make the final decision on the inclusion of conservation equivalency.

If conservation equivalency is determined to be appropriate, the conservation equivalency process should be clearly defined and specific guidance should be supplied in the fishery management documents. Each of the new fishery management plans, amendments, or addenda should include the details of the conservation equivalency program. The guidance should include, at a minimum, a list of management measures that can be modified through conservation equivalency, evaluation criteria, review process, and monitoring requirements. If possible, tables including the alternative management measures should be developed and included in the management documents. The development of the specific guidance is critical to the public understanding and the consistency of conservation equivalency implementation.

Conservation equivalency proposals and Board approval are not required when states adopt a single more restrictive measure than those required in the FMP (e.g., higher minimum size, lower bag limit, lower quota, lower trip limit, closed or shorter seasons). These changes to the management program should be included in a state's annual compliance report or state implementation plan. If states intend to change more than one regulation where one is more restrictive but the other is less restrictive, even if the combined impact is more restrictive, states must submit a conservation equivalency proposal due to unexpected consequences that may arise (e.g., a larger minimum size limit could increase discards).

The states have the responsibility of developing conservation equivalency proposals for submission to the Plan Review Team (see standards detailed below). Upon receiving a conservation equivalency proposal the PRT will initiate a formal review process as detailed in this guidance document. The state submitting the conservation equivalency proposal has the obligation to ensure proposed measures are enforceable. If the PRT has a concern regarding the enforceability of a proposed measure it can task the Law Enforcement Committee with reviewing the proposal. Upon approval of a conservation equivalency proposal, the implementation of the program becomes a compliance requirement for the state. Each of the approved programs should be described and evaluated in the annual compliance review and included in annual FMP Reviews.

The management programs should place a limit on the length of time that a conservation equivalency program can remain in place without re-approval by the Board. Some approved management programs may require additional data to evaluate effects of the management measures. The burden of collecting the data falls on the state that has implemented such a conservation equivalency program. Approval of a conservation equivalency program may be terminated if the state is not completing the necessary monitoring to evaluate the effects of the program.

The Plan Review Team (PRT) will serve as the “clearing house” for approval of conservation equivalency proposals. All proposals will be submitted to the PRT for review. The PRT will collect all necessary input from the technical committee, Law Enforcement Committee, Committee on Economics and Social Sciences and the Advisory Panel. The PRT will compile input from all of the groups and forward a recommendation to the management board.

### **Standards for state conservation equivalency proposals**

Each state that is seeking to implement a conservation equivalency program must submit a proposal for review and approval. Proposals that include an excessive number of options may delay timely review by the PRT and other groups and may ultimately delay the report to the Board. The states should limit the number of options included in a proposal or prioritize the options for review.

State conservation equivalency proposals should contain the following information:

1. Rationale: Why or how an alternate management program is needed in the state. Rationale may include, but are not limited to, socio-economic grounds, fish distribution considerations, size of fish in state waters, interactions with other fisheries, protected resource issues and enforcement efficiency.
2. Description of how the alternative management program meets all relevant FMP objectives and management measures (FMP standards, targets, and reference points). States are responsible for supplying adequate detail and analysis to confirm conservation equivalency based on the most recent stock assessment.
3. A description of:
  - Available datasets used in the analysis and data collection method, including sample size and coefficient of variation.
  - Limitations of data and any data aggregation or pooling.
    - The Technical Committee (TC) should determine an acceptable level of precision for all landings data and develop data standards for other data types used. States may request (but are not required) this information prior to the submission of their proposal. (Any analyses that do not meet approved precision standards should conduct sensitivity analyses to determine the effects of the data uncertainty)
  - The length of time the state is requesting conservation equivalency and a review schedule for the length of the program. If the state does not intend to have an expiration date for the program it should be clearly stated in the proposal with justification. Proposals should identify the length of time measures are intended to be in place and the timing of the review of the specific measures.

4. Each proposal must justify any deviations from the conservation equivalency procedures detailed in the FMP. The state should conduct analyses to compare new procedures to procedures included in the plan, as appropriate, including corroborative information where available.
5. Include a plan describing the monitoring schedule, reporting requirements and documentation process of evaluating the impacts of the conservation equivalency measures.

### **Review Process**

Implementation of new amendments/FMPs should include timelines and a review process for conservation equivalency proposals. However, the review process and timeline needs to be established for all conservation equivalency proposals that are submitted outside of the implementation of a new management document.

The following is a list of the steps and timelines for review and approval of conservation equivalency proposals. Any deviations from the following process should be included in the FMP.

1. Conservation equivalency should be approved by the Management Board and where possible implemented at the beginning of the fishing year.
2. If a state is submitting a proposal outside of an implementation plan process, it must provide the proposal two months in advance of the next board meeting to allow committees sufficient time to review the proposal and to allow states to respond to any requests for additional data or analyses. States may submit conservation equivalency proposals less than two months in advance of the next board meeting, but the review and approval at the upcoming board meeting is at the discretion of the Species Management Board Chair. Proposals submitted less than two weeks before a meeting will not be considered for approval at that meeting. The board chair will submit proposal to the Plan Review Team (PRT) for review.
3. The PRT should notify the state that the proposal is complete.
4. Upon receipt of the proposal, the PRT will determine what additional input will be needed from: the Technical Committee (TC), Law Enforcement Committee (LEC), and Committee on Economic and Social Sciences (CESS). The PRT will distribute the proposal to all necessary committees for comment. The review should include a description of the impacts on or from adjoining jurisdictions or other management entities (Councils and/or NMFS). If possible this description should include qualitative descriptions addressing enforcement, socio-economic issues and expectations from other states perspective (shifts in effort). The review should highlight efforts to make regulations consistent across waterbodies.

5. The PRT will compile all of the input and forward the proposal and comments to the Advisory Panel when possible. However, when there are time limitations, the AP may be asked for comments on a proposal prior to completion of other committee reviews. The Chair of the Advisory Panel (AP) will compile the AP Comments and provide a report to the Management Board.
6. The PRT will forward to the Board the proposal and all committee reviews, including any minority reports. The PRT will provide comment on whether the proposal is or is not equivalent to the standards within the FMP. If possible the PRT should identify potential cumulative effects of all conservation equivalency plans under individual FMPs (e.g. impacts on stock parameters).
7. The PRT reviews should address whether a state's proposal followed the CE standards outlined in this policy, and any additional specifications included in the FMP.
8. The Board will decide whether to approve the conservation equivalency proposal and will set an implementation date, taking into account the requested implementation date in the proposal. Board action should be based on the PRT recommendation as well as other factors such as impacts to adjoining states and federal management programs. When a board cannot meet in a timely manner and at the discretion of the board and Commission Chair, the boards have the option to have the ISFMP Policy Board approve the conservation equivalency plan.

#### **Plan Review Following Approval and Implementation**

1. Annually thereafter, states should describe and evaluate the approved conservation equivalency programs in their compliance reports submitted for annual FMP Reviews.
2. The PRT is responsible for evaluating all conservation equivalency programs during annual FMP reviews to determine if the conditions and goals of the FMP are maintained, unless a different timeline was established through board approval. If the state is not completing the necessary monitoring to evaluate their approved conservation equivalency program, this may be grounds for termination of the plan. The PRT will report to the Board on the performance of the conservation equivalency program, and can make recommendations to the Board if changes are deemed necessary.

#### **Coordination Guidance**

The Commission's interstate management program has a number of joint or complementary management programs with NOAA Fisheries, US Fish and Wildlife Service and the Fishery Management Councils. Conservation equivalency creates additional burden on the Commission to coordinate with our federal fishery management partners. To facilitate cooperation among partners, the Commission should observe the following considerations.



- The Commission's FMPs may include recommendations to NOAA Fisheries for complementary EEZ regulations. Conservation equivalency measures may alter some of the recommendations contained in the FMPs, which would require the Commission notify NOAA Fisheries of any changes. The Commission needs to consider the length of time that it will take for regulations to be implemented in the EEZ and try to minimize the frequency of requests to the federal government.
- The protocol for NOAA fisheries implementing changes varies for the different species managed by the Commission. The varying protocols need to be considered as conservation equivalency proposals are being developed and reviewed.
- When necessary for complementary management of the stock, the ASMFC Chair will request federal partners to consider changes to federal regulations.