

Atlantic States Marine Fisheries Commission

Draft De Minimis Policy

November 2022

The Atlantic States Marine Fisheries Commission (Commission) includes *de minimis* provisions in interstate fishery management plans (FMP) to reduce the management burden for states whose measures would have a negligible effect on the conservation of a species. The ISFMP Charter includes a definition of *de minimis* and the requirement to include *de minimis* provisions in FMPs.

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

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

De minimis provisions within FMPs are designed to reduce the management burden for states whose measures would have a negligible effect on the conservation of a species. This Draft Policy outlines *de minimis* standards for FMPs. A species board may deviate from these standards to address unique characteristics of a fishery. If a board deviates from the Policy's standards, a rationale must be provided within the FMP. It is noted that federal FMPs do not recognize *de minimis* standards; therefore, any *de minimis* measure implemented in a FMP for jointly managed species could result in inconsistent measures between state and federal waters.

This Policy does not automatically change the provisions of current FMPs. In order to change *de minimis* standards, an addendum or amendment process must be completed, unless the FMP specifies a different process.

Minimum Standards

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

be set for each fishery. Boards should review the standard *de minimis* standard measures after each benchmark stock assessment to determine if they still providing a minimal level of species conservation.

***De Minimis* Fishery Designation**

De minimis provisions will be considered separately for commercial and recreational fisheries or combined. There must be a designation that takes into account both sectors of the fisheries. Whether they are combined or separate is a decision for the species board. If there is no commercial or recreational fishery a board can clarify there is no significant fishery, therefore, no *de minimis* designation for that sector is necessary.

***De Minimis* Thresholds**

De minimis thresholds will be based on the average landings from the previous three years of landings. The averaging of multiple years of data prevents a state from taking action as a result of a rare event. A state can be considered *de minimis* if the average landings for the last three years is less than 1% of the coastwide landings.

Sampling Requirements

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