

Atlantic States Marine Fisheries Commission

**ADDENDUM XVI TO THE SUMMER FLOUNDER,
SCUP, AND BLACK SEA BASS FISHERY
MANAGEMENT PLAN**

Delayed Implementation Management Strategies



ASMFC Vision Statement:

Healthy, self-sustaining populations for all Atlantic coast fish species or successful restoration well in progress by the year 2015.

May 2005

Background

This Addendum is adopted under the adaptive management procedures that are a part of the Fishery Management Plans (FMPs) for Summer Flounder, Scup, and Black Sea Bass. The Addendum applies to all three FMPs, and is authorized by Amendment 12, which amended each of these FMPs. The Atlantic States Marine Fisheries Commission and the Mid-Atlantic Fishery Management Council cooperatively manage the summer flounder, scup, and black sea bass fisheries.

In 1992, ASMFC adopted Amendment 2 to the FMP for Summer Flounder. Amendment 2 established a comprehensive program for setting annual fishing regulations where ASMFC, operating through its Summer Flounder, Scup, and Black Sea Bass Management Board (Board), and the Mid-Atlantic Fishery Management Council (Council) met in order to make a recommendation for the total allowable landings (TAL) and commercial and recreational fisheries regulations that would be consistent with achieving the TAL to the NMFS Regional Administrator. The Regional Administrator then published a proposed rule in the Federal Register, accepted public comment, and then published a final rule. Under the terms of the FMP, the states were required to implement the Regional Administrator's decision as a mandatory compliance element. The states were subject to a noncompliance determination under the Atlantic Coastal Fisheries Cooperative Management Act if they did not implement the decision.

In 1996, the Board and Council adopted the FMP and Addendum 1 for Scup (Council Document: Amendment 8 and the Regulatory Amendment to the FMP for Summer Flounder, Scup, and Black Sea Bass). The FMP established a program for scup to set annual specifications for commercial and recreational fisheries similar to the summer flounder program adopted in 1992.

In 1996, the Commission and the Council adopted the FMP for Black Sea Bass (Council Document: Amendment 9 to the Fishery Management Plan for Summer Flounder, Scup, and Black Sea Bass). This document established a program for black sea bass for setting annual specifications for commercial and recreational fisheries similar to the summer flounder program adopted in 1992, except that in this case, the Board's decision on specifications was binding upon the states, regardless of subsequent action taken by the Regional Administrator.

Addendum IV established the annual specification setting process for the Summer Flounder, Scup, and Black Sea Bass Management Board. Addendum IV made the specification setting process for summer flounder and scup consistent with black sea bass such that the Board's decision on the annual specifications were binding upon the states regardless of the Regional Administrator's subsequent actions. The Addendum was intended to clarify the states ability to operate effectively and is consistent with basic concepts of state sovereignty.

In 1998, the Commission adopted Amendment 12 to the FMP for Summer Flounder, Scup, and Black Sea Bass. Amendment 12 contained an adaptive management framework procedure for modifying FMP elements without having to go through the complete FMP amendment process.

In 2004, the Board and Council adopted Addendum XIII (Council Document: Framework 5), which established a process to set the TAL for up to three years. Multi-year TALs do not have to

be constant from year to year, but instead are based upon expectations of future stock conditions as indicated by the best available scientific information during the year in which specifications are set.

Statement of the Problem

Since about 2001, the Administrative Oversight Committee, the ISFMP Policy Board, and the Summer Flounder, Scup, and Black Sea Bass Management Board have expressed concern over the timeliness of state implementation of required management measures. Specifically, these groups are concerned that the traditional non-compliance finding and sanctions under the Atlantic Coastal Fisheries Conservation and Management Act (ACFCMA) addressing quota overages cannot address short-term delays in implementation that range from a few days to a few months. The traditional process cannot deal with the inequities that result from states implementing current measures after the fisheries open.

At the ASMFC Annual Meeting in 2002, the ISFMP Policy Board approved a series of changes to the ISFMP Charter. One of the changes requires each of the species management boards to determine if delays in implementation have impacted, or may negatively impact, the achievement of the goals and objectives of the management program. At the August 2003 ASMFC meeting, the Policy Board determined that the management of summer flounder, scup, and black sea bass has repeatedly been affected by delays in implementation of required regulations. These species were given the highest priority and will be used as a pilot program on the development of addenda to address the impacts of delayed implementation for other ASMFC species.

The addendum is intended to provide a species-specific mechanism of ensuring that a state meet its obligations under the plan in a way that minimizes the probability that a state's delay in complying does not adversely affect other states' fisheries or conservation of the resource. These measures are deemed critical for the long term conservation of the species. This Addendum does not propose to modify the existing compliance review and sanction process that is described in the ASMFC guidance documents and the ACFCMA. This Addendum also does not propose to modify the existing conservation equivalency procedures for summer flounder, scup, and black sea bass. States have the ability to adopt measures that are more conservative than those approved by the Board.

Issue 1: Delayed Implementation of Commercial Regulations

- A) Failure to adopt annual adjustments to minimum fish size for summer flounder, scup, and/or black sea bass**
- B) Failure to adopt initial Winter I trip limits by January 1 and Winter II trip limits by November 1 for the scup fishery.**
- C) Failure to adopt reduced scup trip limit for the Winter I and Winter II periods when required due to established triggers.**

For each day that a state does not implement these commercial measures, an equal number of days during the same or equivalent time period will be closed in the following fishing season. For example, if a state does not implement appropriate minimum fish sizes for the first 2 weeks

of the fishing season, in the following year the season would be closed for the first 2 weeks of the season. Similarly, if a state does not reduce scup trip limits for the Winter I or Winter II periods as required by established triggers, the following fishing season would be closed for an equal number of days the delay occurred after the trigger had been met.

D) Failure to close the black sea bass fishery and/or the summer scup fishery after the state quota has been reached

The ASMFC allocates the black sea bass coastwide commercial quota and the summer scup commercial quota to states from Massachusetts to North Carolina. The ASMFC also monitors state landings to prevent individual states from exceeding their quota. The NMFS monitors the coastwide black sea bass and scup quota and closes the commercial fishery in federal waters when the coastwide quota has been reached. An individual state has the potential to exceed their state quota to the level that contributes to the NMFS closing the federal commercial coastwide fishery before all states have the opportunity to harvest their individual state allocation. This scenario has the potential to result in inequities between state and federal permit holders.

If a state fails to close its black sea bass and/or its summer scup fishery after the state quota has been reached, states will compensate pound for pound for up to 25% of the original state quota. Any overages beyond 25% of the state quota are compensated for at 1.5 times.

Issue 2: Delayed Implementation of Recreational Regulations

The following proposed compensation strategies would be applied to a state even if that state did not exceed its recreational harvest limit.

- A) Failure to adopt Board-approved size limits for summer flounder, scup, and/or black sea bass**
- B) Failure to adopt Board-approved seasonal closures for summer flounder, scup, and/or black sea bass**
- C) Failure to adopt Board-approved possession limits for summer flounder and/or scup by the date the current season opens.**
- D) Failure to adopt Board-approved possession limits for black sea bass by Jan 1 or the date the current season opens, whichever is later.**

For each day that a state does not implement the appropriate recreational measures, an equal number of days during the same or equivalent time period will be closed in the following fishing season.

Issue 3: Maximum Implementation Period

Currently, none of the Commission's management programs include a minimum time period for staff to provide notification to the states before management changes can be required nor is a maximum period for a state to implement the change required. A minimum notification period will allow the states time to make the required changes, and a maximum implementation period

should make the implementation dates more consistent among the states and hold states accountable for required management changes in a timely manner.

Maximum Implementation Period (this applies to scup trip limit changes and not to other management measures that have to go through state rule-making processes)

Commission staff will notify states within 3 working days prior to requiring a management change. A state will have a maximum of 7 calendar days to implement any required changes upon notification by the commission. This allows states sufficient time to notify fishermen and dealers of the required change. noting that it applies to scup trip limit changes and not to other management measures that have to go through state rule-making processes.

Issue 4: Required notification period for states to notify the Commission of regulatory changes

Minimum Notification Period

States would have to notify the ASMFC staff within 7 calendar days of any management changes. States would also continue to submit annual reports on June 1.