

*Atlantic States Marine Fisheries Commission*

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

**Commercial Quota Transfer Provisions for Black Sea Bass  
and Scup (Summer Period Only)**



*ASMFC Vision Statement:*

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

**November 2009**

## **1.0 Introduction**

This Addendum is adopted under the adaptive management/framework procedures that are a part of the Fishery Management Plan (FMP) for Summer Flounder, Scup, and Black Sea Bass. Summer flounder, scup, and black sea bass are jointly managed by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council). The Scup and Black Sea Bass FMPs were incorporated into the Summer Flounder FMP as Amendment 8 and 9, respectively. In 1998, the Commission and the Council adopted Amendment 12 to the FMP. In addition to measures bringing the Council process into compliance with the Sustainable Fisheries Act, Amendment 12 contained a framework procedure for modifying FMP elements without having to go through the complete FMP amendment process.

The management units for summer flounder, scup, and black sea bass remain unchanged in this Addendum. Specifically, the management unit for scup and black sea bass in US waters is the western Atlantic Ocean from Cape Hatteras, North Carolina northward to the US-Canadian border.

## **2.0 Statement of the Problem**

The Summer Flounder, Scup, and Black Sea Bass FMP contains a provision that allows the transfer of commercial allocations between states. This is a highly useful technique that can be utilized to address a variety of problems. The transfer provisions in the FMP are detailed for transfers involving NOAA; however, the scup and black sea bass plans did not provide adequate guidance for Commission-only state-by-state quota management.

Prior to the adoption of this Addendum the practice of governing in-season quota transfers was adequate but suffered two major weaknesses. The first being the inability for states to reconcile overages that are compiled from landings statistics collected at year's end and beyond December 31. Most states do not adequately reconcile state landings data until 30 to 60 days after the fishing year. The December 15 cut-off date discourages end of year transfers simply because state officials do not want to transfer quota to another state when they have not finalized their landings information for the year. This is a logical position to take considering an error in the data could cause a reduction in quota the following year if an overage is determined.

Second, some states do not harvest their entire allocations, while other states end up with minor overages. For these migratory species, it may be reasonable to accommodate transfers of unused quota to states where fisheries were more active to reconcile minor inadvertent overages. In 2008, states addressed minor overages on scup in Massachusetts, Connecticut, and New York by shifting under harvest from other states through a onetime arrangement of transfer shares. Although the transfers were accomplished last year it was time consuming and cumbersome because the plan was silent on the policies regarding allocation of unused quota to states with varying quotas and varying levels of overages.

### **3.0 Background**

Amendment 5 to the Summer Flounder FMP detailed commercial quota transfer provisions for the summer flounder. The regulations allowed a state to request written approval from the Regional Administrator to transfer all or part of its annual commercial summer flounder quota to one or more states. The National Marine Fisheries Service (NMFS) maintained a policy of considering only quota transfer requests submitted by December 15 of each year in order to ensure that a notice announcing the quota transfer could be filed with the Office of the Federal Register by the end of the year in which the request was made. In September 2005, NMFS published a rule that allows NMFS to consider and process state commercial quota transfer requests that address late-season circumstances that necessitate a state quota transfer. With these changes, quota transfer requests addressing unforeseen conditions in a fishery that arise late in the fishing year could be approved, even if the transfer request is made in the subsequent fishing year.

Amendment 8 to the Summer Flounder FMP contains regulatory language that allows for transfers in the scup commercial fishery in a state-by-state system, giving states the ability to transfer or combine quota to increase the flexibility of the system. However, the Amendment does not contain guidelines on how transfers should occur. Amendment 9 to the Summer Flounder FMP contains regulatory language that allows for transfers in the black sea bass commercial fishery that operate under the transfer provisions for summer flounder as described in the previous paragraph. While the FMP details transfer provisions for state-by-state systems, the federal plan has not adopted state-by-state systems for scup or black sea bass.

The Commission and Council jointly adopt total allowable landings (TAL) for black sea bass each year with 49% allocated to the commercial sector. The Commission established a state-by-state management program to distribute the commercial quota first in Addendum XII and more recently in Addendum XVI. The state-by-state quota system is only recognized by Commission and state regulations; it is not in federal regulations. Both Addenda XII and XVI allow for the transfer of black sea bass commercial quota but do not detail how the transfer process is conducted.

The Commission and Council also jointly adopt a TAL for scup each year with 78% allocated to the commercial sector and split into 3 periods: winter I, summer, and winter II. The Commission established a state-by-state management program to distribute the commercial quota for the summer period in Addendum V; however, it is not recognized in federal regulations. Commission addenda do not address specifically quota transfers in the scup summer period.

As a practical matter, states routinely under harvest or slightly overharvest their state specific allocations inadvertently due to delays in reporting, inconsistencies in the data collection processes, unanticipated changes in catch rates, and implementation delays in trip limit changes or fishery closures. Deviations from the state-specific allocations are minor, but common. The FMP requires that each state deduct overages from the following year's quota when they occur.

The Commission sought comment on a process to reconcile quotas to address these minor inadvertent overages and adopted the measures contained in section 4.0 of this Addendum. The measures outlined below do not change states' shares of the overall allocation established by

previous addenda. They are merely a mechanism to address minor overages and “balance the books” for the year. The measures in section 4.2 and 4.3 of this addendum are interim measures to address the immediate needs of the Summer Flounder, Scup, and Black Sea Bass Board member states. The Commission’s Interstate Fisheries Management Program (ISFMP) Policy Board is currently addressing the broader concepts behind quota ownership; disposition of unharvested quota; and quota transfers, including a state’s right to choose how to use quota allocated to them. The provisions of sections 4.2 and 4.3 will expire at the end of the 2011 fishing year unless the Board takes action to modify or extend the provisions of the Addendum. The Board can extend the provision of the Addendum through a vote. This Addendum is not intended to be precedent setting for any decisions that may be made by the ISFMP Policy Board.

The measures attempt to accomplish three objectives:

1. Allow Commission staff to streamline and coordinate the transfers of quota.
2. Establish clear policies and administrative protocols to guide the allocation of transfers from states with underages to states with overages.
3. Allow for quota transfers to reconcile quota overages after year’s end.

**4.0 Management Program Alternatives for the Black Sea Bass and Scup Commercial Fishery:** Establish protocols for within-year transfers and end-of year reconciliations that address quota overages. *Any measures adopted through the addendum process would replace the transfer provision language in Addendum XVI.*

#### **4.1 State-to-State Transfers**

##### **Establish policies to govern quota transfers.**

Transfers between states may occur upon agreement of two states at any time in the fishing season up to 45 days after the last day of the fishing season. All transfers require a donor state (state giving quota) and a receiving state (state accepting additional quota). There is no limit on the amount of quota that can be transferred by this mechanism, and the terms and conditions of the transfer are to be identified solely by the parties involved in the transfer. In order to affect a within-year transaction, the Administrative Commissioner of the agency involved must submit a signed letter to the Commission identifying the involved states, species, and pounds of quota to be transferred between the parties. A transfer becomes effective upon receipt by Commission staff of the signed letters from the donor and receiving states, and does not require the approval of the Commission staff or Board. All transfers are final upon receipt of the signed letters at the Commission. In the event that the donor or receiving member of a transaction subsequently wishes to change the amount or details of the transaction, both parties have to agree to the change, and submit to the Commission signed letters from the Administrative Commissioner of the agencies involved.

#### **4.2 Automatic Reconciliation**

In a year where the coastwide quota or fishing period quota was not exceeded, any state-specific overage would be automatically forgiven in its entirety.

#### **4.3 Multi State Reconciliation Process**

The quota reconciliation process takes place annually prior to March 1 and covers the previous calendar year. Commission staff, working in conjunction with Commission members, will

compile the annual landings of scup and black sea bass for each jurisdiction. The analysis includes landings by each jurisdiction for the entire year for black sea bass and for the summer period (May - October) for scup. Commission staff will determine and notify Commission members as to which states exceeded their state-specific allocations, and those that under-harvested their allocations.

Commission staff will contact those states with underages to confirm the accuracy and reliability of the data. States will then notify the Commission as to whether or not the underage from their state may be transferred to a “common pool” that may be re-distributed to states with overages.

The following method(s) will be used to distribute under-harvest to those states with minor quota overages:

#### **4.3.1 Distribution Process**

##### **Negotiated Distribution Process**

Commission staff will notify all states with overages of the amount of fish available (total under-harvest for the period by all states). Commission staff will set up a conference call for states with overages to develop a sharing agreement or formula to distribute the underage based on the nature of the overages in that given year. The states will have one week to reach an agreement on how to distribute the poundage. The unanimous agreement of the states with overages is required to distribute underages in this manner. If unanimous agreement has been reached, the staff will adjust the state-specific allocation according to the agreement and notify all states of the results. If unanimous agreement cannot be reached, then the below option is the default distribution process.

##### **Default: Underage Re-distribution Based on Existing Allocation Proportions**

The common pooled underage is to be apportioned to each state based on the states' percent share of the quota as established by the FMP. A state may receive a portion of the pooled underage up to, but not to exceed their total overage. Additional poundage beyond the amount to cover a state's overage is transferred to the other states in proportion to the percent allocation shares among the remaining states with overages until the underage is fully distributed. This method considers the magnitude of the overage to be considered since a state's overage could be very small relative to its allocation (see Table 1 and Transfer Scenario 1).

Table 1. Actual quota and landings performance for the 2008 summer scup fishery presented for purposes of depicting quota transfer scenarios 1 and 2.

State	Allocation	2008 Quota	2008 Landings	Underage/overage	Underage/overage as a % of quota
ME	0.12%	2,117	0	2,117	100%
RI	56.19%	983,312	973,088	10,224	1%
NJ	2.92%	51,037	3,820	47,217	93%
MD	0.01%	208	0	208	100%
VA	0.17%	2,887	2,301	586	20%
NC	0.02%	436	3	433	99%
<b>Totals among states with surplus</b>	<b>59.43%</b>	<b>1,039,997</b>	<b>979,212</b>	<b>60,785</b>	<b>6%</b>
MA	21.59%	377,742	443,974	-66,232	-18%
CT	3.15%	55,190	71,976	-16,786	-30%
NY	15.82%	276,905	282,171	-5,266	-1.9%
<b>Totals among states with deficits</b>	<b>40.56%</b>	<b>709,837</b>	<b>798,121</b>	<b>-88,284</b>	<b>-12%</b>
<b>Net Totals</b>		<b>1,749,834</b>	<b>1,777,333</b>	<b>-27,499</b>	<b>-2%</b>

Table 2. Process for re-distributed underages based on allocation percentages.

*Step 1: First iteration of quota overage reconciliation: 42,339 lbs. of 60,785 transferred*

State	% Allocation	Max. % share of underage	2008 overage	Portion of underage available based max share %	Underage accepted
MA	21.59%	53.22%	-66,232	32,347	32,347
CT	3.15%	7.77%	-16,786	4,726	4,726
NY	15.82%	39.01%	-5,266	23,712	5,266
<b>Totals</b>	<b>40.56%</b>	<b>100.00%</b>	<b>-88,284</b>	<b>60,785</b>	<b>42,339</b>
				<b>Remaining</b>	<b>18,446</b>

*Step 2. Second iteration of quota overage reconciliation: remaining 18,446 from first iteration distributed.*

State	% Allocation	Max. % share of underage	Remaining overage after first iteration	Portion of underage available based on % allocation	Underage accepted	Final Overage	Net overage as % of states quota
MA	21.59%	87.25%	-33,885	16,095	16,095	-17,790	4.7%
CT	3.15%	12.75%	-12,060	2,351	2,351	-9,709	17.6%
<b>Totals</b>	<b>24.74%</b>	<b>100.00%</b>	<b>-45,945</b>	<b>18,446</b>	<b>18,446</b>	<b>-27,499</b>	

**Final Outcome**

State	Original Overage	Net Overage as % of states quota
MA	18%	4.7%
CT	30%	17.6%
NY	1.9%	0%

**4.4 Compliance Schedule**

The management programs established through Addendum XX is effective on November 2, 2009.

**5.0 References**

MAFMC. 1993. Amendment 5 to the Summer Flounder Fishery Management Plan. Dover, DE.

MAFMC. 1996. Amendment 8 to the Summer Flounder Fishery Management Plan for the Scup Fishery. Dover, DE.

MAFMC. 1997. Amendment 10 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan for the Scup Fishery.