

Atlantic States Marine Fisheries Commission
FISHERY MANAGEMENT PLAN FOR TAUTOG
ADDENDUM 1



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SUMMARY OF APPROVED CHANGES

I. *De minimis* Specifications

- Insert the definition of the term *de minimis*.
- Change the criteria for allowing *de minimis* to 10,000 pounds or 1% of the coastwide commercial landings.
- Clarify the procedures for evaluating and determining *de minimis* and specify the management measures required of *de minimis* states.
- Require that *de minimis* states also implement recreational management measures for their commercial fisheries

II. Adjustment to the Compliance Schedule

- Require that all states implement interim effort controls by **APRIL 1 1998** and reach the overfishing definition by **APRIL 1 2000**.

III. Correction of FMP errata

- Correct several minor typographical errors.

Please consult the Fishery Management Plan for Tautog, ASMFC FMR number 25, for complete information on the tautog management program.

INTRODUCTION

The Atlantic States Marine Fisheries Commission (Commission) adopted the Fishery Management Plan for Tautog (FMP) in March 1996. The FMP requires a minimum possession size to increase spawning stock biomass and yield to the fishery. It also includes fishing mortality targets intended to initially rebuild the stocks and to prevent future overfishing. All states are required to implement minimum size regulations beginning in 1997, and states north of Delaware Bay are also required to comply with an interim fishing mortality target at the same time. The states from Delaware to North Carolina are required to meet the interim target in 1998.

In October 1996 the Tautog Technical Committee reviewed state commercial fishery proposals. Due to a paucity of fishery data in most states, the Committee found it difficult to evaluate the proposals. The Committee cautioned that if adequate data were not collected it would become increasingly difficult to evaluate compliance with the FMP provisions in future years.

As implementation of the required effort controls approached, states began to realize that other provisions were not sufficiently addressed in the FMP. One area identified as needing further clarification and explanation is the *de minimis* provisions. Some states also expressed concern with the differential implementation dates of the Plan.

After receiving the Technical Committee report in October 1996, the Tautog Management Board (Board) instructed the Tautog Plan Review Team (PRT) to draft an addendum to the Fishery Management Plan for Tautog. The addendum was initially proposed to address changes to the *de minimis* criteria, but its scope was expanded to address concerns with the implementation schedule stemming from the data deficiencies and the unequal compliance dates. Specifically, several states have expressed concerns that the plan does not allow adequate time for states to determine state specific fishing mortality rates. Others feel that the compliance schedule should be consistent over the entire management unit.

The PRT drafted an addendum to address the issues identified by the Management Board and in March 1997 the Board reviewed and approved the draft addendum. Public comment was solicited through a series of public hearings in early May 1997 and a final draft was presented to the Management Board for action at the 1997 ASMFC Spring Meeting. The Board approved the management changes identified in this addendum on May 19, 1997.

ADAPTIVE MANAGEMENT MEASURES

I. *De minimis* Specifications

A. Statement of the Problem

The Tautog FMP allows any state having commercial landings less than 1% of the total coastwide commercial tautog landings to apply for *de minimis* status. However, this statement alone does not clearly reflect the intention of the Tautog Management Board regarding *de minimis* status. There are several issues that require clarification.

First, a clear definition and explanation of *de minimis* is lacking. This is not a common term, so it is important that it be defined in the FMP to reduce confusion regarding the available management options.

Second, the *de minimis* criteria of 1% of the coastwide commercial landings may become unmanageably low if landings decrease. If coastwide landings decline, the 1% criteria could drop to such a level that states with essentially minimal landings may fail to qualify for *de minimis*. For example, the original FMP contains data through 1993. Commercial landings in 1993 were 653,262 pounds, so the 1% *de minimis* criteria at that time was 6532 pounds. Landings have since declined to only 372,502 pounds in 1995, resulting in the *de minimis* criteria dropping by nearly half. The impetus for allowing *de minimis* provisions is to recognize

that in some circumstances the costs of implementing regulations can far outweigh their conservation benefit; if the criteria is too low, this objective is not attainable.

Third, the process that the Board will follow in granting *de minimis* is not adequately described in the FMP, nor does it clearly state the Board's intentions regarding the *de minimis* process. The FMP does not specify the steps necessary to review applications for *de minimis*, it does not specify which management entity has the authority to grant a state *de minimis* status, and it does not specify the measures with which a state must comply in the event *de minimis* is denied.

Finally, the measures currently required of *de minimis* states may not be sufficient to prevent excessive landings in a reasonable amount of time. As regulations limit landings and value increases, inevitably someone could take advantage of a *de minimis* state by landing a large quantity of fish. Without close monitoring of the fishery and restrictions to prohibit such unexpected landings, over a year could pass before the *de minimis* state realizes that a large quantity of tautog has been landed. It could then take several months for the state to implement the newly required regulations. This could lead to one to two years of unrestricted commercial landings before regulations are implemented. One possible solution is to require that states adopt commercial measures identical to the recreational management measures.

B. Additional *De minimis* Fishery Guidelines

1. Definition:

The ASMFC Interstate Fisheries Management Program Charter (Charter) defines *de minimis* as 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.

2. Criteria:

To be eligible for *de minimis* consideration, a state must prove that its commercial landings in the most recent year for which data are available did not exceed *the greater of* 10,000 pounds or 1% of the coastwide commercial landings.

3. Procedures:

States must specifically request *de minimis* status each year and requests for *de minimis* status will be reviewed by the Tautog Plan Review Team (PRT) as part of the annual FMP review process. Requests for *de minimis* must be submitted in writing to the ASMFC Tautog FMP Coordinator and must contain at least: all available commercial landings data for the current year, commercial landings data for at least three years preceding, commercial regulations for the current and preceding years, and commercial regulations for the year for which *de minimis* is requested. The FMP Coordinator will then forward the information to the PRT and, if necessary, the Tautog Technical Committee and Stock Assessment Subcommittee. In determining whether or not a state meets the *de minimis* criteria, the PRT will consider the information provided with the request, the most recent available coastwide landings data, any information provided by the Technical Committee and Stock Assessment Subcommittee, and projections of future landings. The PRT will review the intended regulatory program of the state to ensure that the state is taking reasonable steps to prevent a sudden and unexpected increase in landings. The PRT will make a recommendation to the Management Board to either accept or deny the *de minimis* request. The Board will then review the PRT recommendation and either grant or deny the *de minimis* classification. The Board must make a specific motion to grant a state *de minimis* status. By deeming a given state *de minimis*, the Board is recognizing that the state has a minimal commercial tautog fishery, that there is little risk to the health of the tautog stock if the state does not implement the full suite of management measures, and that the overall burden of

implementing the complete management and monitoring requirements of the FMP outweigh the conservation benefits of implementing those measures in the particular state.

If *de minimis* status is granted, the *de minimis* state is required to implement (1) the minimum size for the commercial fishery, (2) the pot and trap degradable fastener provisions, and (3) regulations consistent with those in its recreational fishery. The state must monitor its landings on at least an annual basis and provide a compliance report as outlined in Section 5.1.2 of the Tautog FMP. If the FMP is altered through adaptive management as specified in Section 4.4 of the Tautog FMP the Management Board will specify by motion which measures *de minimis* states must adopt.

If commercial landings in a *de minimis* state exceed the *de minimis* threshold, the state will lose its *de minimis* classification, will be ineligible for *de minimis* in the following year, and will be required to implement all the commercial fishery requirements of the FMP. If the Management Board denies a state's *de minimis* request, the state will be required to implement all the commercial fishery requirements of the FMP. When a state is denied or loses its *de minimis* status the Management Board will set a compliance date by which the state must implement the required regulations.

4. Additional *De minimis* Requirements:

De minimis states must implement commercial management measures that are consistent with their recreational management measures, including such measures as seasonal closures and possession limits.

II. Adjustment to the Compliance Schedule

A. Statement of the Problem

The implementation schedule approved in the original Tautog FMP may be problematic because (1) data are not be available to evaluate scheduled regulatory obligations, and (2) the implementation schedule is not consistent for all states. The FMP required all states to submit a commercial fishery management proposal in October 1996 for review by the Technical Committee and approval by the Board. During this review it became apparent that the data are insufficient to satisfactorily evaluate the current fishing mortality in a number of states and to properly evaluate state fishing mortality reduction proposals. Fortunately, many states began increased data collection efforts in 1996 that will lead to more accurate estimation of fishing mortality on both a coastwide and a regional basis. It will take time for this data to be analyzed and incorporated into the management program. Also, some states have indicated that the differential compliance schedule is inequitable.

B. Approved Change to the Compliance Schedule

1. Require that all states implement effort controls to reach the interim target fishing mortality rate of $F=0.24$ (22% annual exploitation rate) by **April 1 1998**.

and,

2. Require that states maintain the interim fishing mortality rate until **April 1 2000**, at which time they will be required to reduce fishing mortality to or below the overfishing definition of $F=M=0.15$.

The Board established a schedule of plan submission and review to meet these guidelines.

- **Summer and Fall 1998:** Technical Committee, develop guidelines to review state proposals
- **January 1, 1998:** States submit proposals for reaching $F=0.24$
- **By January 15, 1998:** Technical committee, review of state proposals
- **January 1998 ASMFC Week:** Board, review and approval of proposals
- **APRIL 1, 1998: Implement Regulations to Meet $F=0.24$ Target and 14" size**
- **April 15, 1998:** States submit verification of implementation of approved plans.
- **By May 1, 1998:** Plan Review Team, review of state implementation.
- **May 1998 ASMFC Week:** Board, review of compliance
- **April 15, 1999:** States submit verification of continuation of approved plans
- **By May 1 1999:** Plan Review Team, review of state implementation
- **May 1999 ASMFC Week:** Board, review of compliance
- **October 1, 1999:** States submit $F=0.15$ plans
- **By October 15 1999:** Technical Committee, review of state proposals
- **1999 ASMFC Annual Meeting:** Board, review and approval of state proposals
- **APRIL 1, 2000: Implement Regulations to Meet $F=0.15$ Target**
- **April 15, 2000:** States submit verification of implementation of approved plans
- **By May 1, 2000:** Plan Review Team, review of state implementation
- **May 2000 ASMFC Week:** Board, review of compliance

III. FMP errata

1. Acknowledgments Section: Frank Steimle is with NMFS, not USFWS.
2. On page 8, section 1.2.2.1, fishing mortality (F) is incorrectly stated as $F=0.54$. It should be corrected to $F=0.58$.
3. The header for Table 14, page 36, should read "...reductions in tautog recreational landings..."

ANALYSIS AND ALTERNATIVES CONSIDERED

The Management Board considered a number of alternative measures before approving the adaptive management measures above.

De minimis Specifications Alternatives and Analysis

1. Definition of *De minimis*.

Alternatives:

The only definition considered is that contained in the ISFMP Charter.

Analysis:

a. Take no action.

If no action is taken, the FMP will not contain a definition of this important term and readers will be required to consult the Charter. However, the Charter is not as broadly distributed as an FMP. Therefore, the meaning of *de minimis* may not be clear.

b. Adopt the proposed additional language.

Inserting the definition will clarify the meaning of *de minimis*, thus dispelling any confusion as to how the term is used in the Tautog FMP.

2. Changes to the Criteria

Alternatives:

In addition to the preferred criteria which was approved, the Management Board considered several alternative *de minimis* criteria, including:

1. the greater of: 5,000 pounds or 1% of the coastwide commercial landings in the most recent year for which data are available.

2. 1% of the average landings during the 1991-1993 reference period (9,240 pounds).

Analysis:

a. Take no action.

If the criteria remains unchanged, the landings value for determining *de minimis* (1% of the total landings) will change annually. If landings decrease significantly, this value could become so low that many states having minor fisheries of little economic value will be denied *de minimis*. Additionally, states meeting the *de minimis* criteria will be left with small annual landing limits that are unmanageable. Finally, if a state chooses to ensure it will continually meet the *de minimis* criteria by setting a quota equal to the threshold value, the state will have to change the quota value annually as the *de minimis* value changes.

Ultimately, without changing the criteria, it may become increasingly difficult for a state to meet the *de minimis* threshold. If denied *de minimis*, the state will be required to implement complete regulations, the cost of which could far exceed the value of the fishery. In that circumstance, the state may choose instead to close its tautog fishery. In addition to ending any directed fisheries, such action would prohibit any landings of tautog that are caught as bycatch in other fisheries, thus increasing discards.

b. Adopt the Proposed Criteria.

Taking this action will better reflect the intention of the Management Board in developing the initial FMP. At the time, landings had been hovering around a million pounds and had just dropped to around 650 thousand pounds. This resulted in *de minimis* landings criteria of 6 to 10 thousand pounds. The Board felt landings of this magnitude met the requirements of not presenting significant risk to the fishery, while still allowing some commercial fishing activity and bycatch landings, thus reducing regulatory discards.

The states likely to request *de minimis* status are Delaware, Maryland, and North Carolina. Under the preferred alternative as well as the other two options, all three states would be eligible at this time. Under none of the considered options would any states from New Jersey through Massachusetts be eligible. Virginia's eligibility will depend on whether the current trend of increasing landings in Virginia continues. Based on 1994 landings of 10.32 thousand pounds and assuming that 1995 and 1996 landings will either continue to increase or remain constant, Virginia would not be eligible under any of the proposed alternatives.

Based on the 1994 average price per pound of \$0.53 in the states Delaware through North Carolina, the preferred alternative will allow a fishery in each *de minimis* state that will be worth around \$5000.

c. Adopt an alternative criteria

Any of the proposed values could be selected with minimal risk to the stock. Assuming the highest option is selected, three states are *de minimis*, and they land the maximum allowed results in landings of 30,000 pounds. This is less than 1% of the 1995 recreational landings and around 6% of the 1994 commercial landings. The smaller values are considered by some to be safer choices, but they result in extremely restrictive fisheries in the *de minimis* states.

3. Protocol Additions

Alternatives:

The addendum offers language intended to clarify the *de minimis* process. The only alternative considered is that of taking no action.

Analysis:

a. Take no action.

Failing to elaborate the protocol will not clarify the Board's intent regarding the procedures for determining and evaluating *de minimis*. It will not be clear to the public or to the states who is responsible for granting *de minimis*, how such decisions are reviewed, and what is required when *de minimis* is denied. Accordingly, such crucial decisions would then rest upon the judgment and interpretation of the Plan Review Team and the Management Board. This will present difficulty and confusion each time a *de minimis* request is reviewed.

b. Adopt the proposed changes.

Adopting the additions will clarify the responsibilities of the Technical Committee and the Management Board in the *de minimis* review and approval process. It will also clarify what a state must do if it is denied *de minimis*.

4. Additional Requirements

Alternatives:

The addendum considers requiring that *de minimis* states adopt commercial measures identical to their recreational measures. The alternative would be to take no action.

Analysis:

a. Take no action.

This alternative makes no additions to the management measures for *de minimis* states. States would only be required to implement the minimum size and to monitor their fishery annually. A concern is that fishermen could land tautog in *de minimis* states in an effort to circumvent conservation measures in other states. Without adequate controls, over a year could lapse before such landings are identified, the *de minimis* classification is removed, and appropriate measures are adopted.

b. Adopt the additional requirements.

Adopting the proposed language will require *de minimis* states to adopt the recreational management measures for their commercial fisheries. This alternative has a number of benefits. It provides a means by which states can be confident they will maintain their *de minimis* status, it will prevent large landings by fishermen from other states attempting to circumvent conservation regulations in non-*de minimis* states, it will ease management burdens and confusion, and it will minimize regulatory discards by assuring that bycatch can be landed and reported without jeopardizing a state's *de minimis* status.

Changes to the Compliance Schedule

Alternatives:

The addendum contains several specific compliance schedules, as well as a "take no action" alternative. Also retained is the possibility of considering other dates, as suggested through the public review process or by the Management Board upon final consideration of the addendum.

The specific proposals were:

1. Require that all states adopt the interim fishing mortality, $F=0.24$, by **April 1 1998** and require that states maintain the interim fishing mortality rate until **April 1 2001**, at which time they will be required to reduce fishing mortality to or below the overfishing definition of $F=M=0.15$
2. Require that all states adopt the interim fishing mortality, $F=0.24$, by **April 1 1998** and require that states maintain the interim fishing mortality rate until **April 1 1999**, at which time they will be required to reduce fishing mortality to or below the overfishing definition of $F=M=0.15$.

Analysis:

1. Take no Action.

This alternative does not change the implementation schedule. The Technical Committee may not be able to evaluate fishing mortality reductions within the timeline set by the current schedule. This will make it difficult for the Management Board to determine compliance with the management measures required for 1997. Also, the inequity created by the different compliance dates is not addressed.

On the other hand, maintaining the current schedule will provide the tautog stock with protection. Although data is scarce for much of the management area, all available data

indicate that the tautog resource is overfished and in low abundance over most of its range. Recreational landings have gradually declined in recent years, and commercial landings have dropped off sharply since the early 1990s. It is highly unlikely that the resource can support the current fishing mortality over the long term.

2. Adopt Proposed Change #1.

Under this alternative, states would adopt initial effort controls in 1998 and maintain their regulations through 2001, when they would adopt controls to reach the overfishing definition $F=M=0.15$.

Accepting this measure will adjust the Plan so that all states must implement initial effort reductions in 1998. This results in no change to the compliance dates for states south of Delaware Bay, but allows one additional year for the states to the north to meet the interim target fishing mortality. This addresses any inequities that may have been created by the different compliance dates.

It will also delay implementation of measures to reduce fishing mortality to or below the overfishing definition until 2001. During FMP development, the Technical Committee offered this as an alternative implementation schedule. Alternative 2 in the Draft FMP delayed the $F=0.15$ target until 2001. This alternative provides two years of stable regulations (1998-1999) and one year for thorough data analysis (2000) before states must reduce fishing mortality below the overfishing definition.

The proposed compliance schedule is similar to alternative 2 contained in the Draft FMP taken to public hearing. Recognizing the data deficiencies, the Technical Committee recommended adoption of the size limit in 1997 and effort controls in 1998. At the time, the Committee indicated that such a schedule offered some protection to the stock, while allowing states sufficient time to determine their fishing mortality. At the very least, this timetable would prevent fishing mortality from increasing. The Technical Committee also indicated that fishing mortality exceeding the overfishing definition is not sustainable and will delay stock recovery.

The protection provided by the delayed implementation schedule is possible because of tautog's growth rate and the timing of regulations. In simplified terms, the size limit provides an initial, up to one-year protection to those fish below the minimum size. In effect, fishing mortality is delayed on undersize fish until they reach recruitment size. In the absence of other regulations, this delayed mortality would soon be recouped by fishing effort as the fish recruit to the fishery. However, if effort controls are implemented as these protected fish reach the size of recruitment, they will receive continued protection from excessive fishing mortality. Fishing mortality on these recruits, initially delayed through the size limit, is reduced by the additional measures.

The interaction of tautog's growth rate and the compliance schedule can be illustrated in the following simplified example. Tautog grow about one to one and a half inches per year as they grow from about 9 to 18 inches. The 12" to 13" fish protected by the initial 13" minimum size will be 13" - 14" the following year. Since the size limit then increases to 14", some of these fish will again be protected from fishing mortality for another year. The next year, these fish will be over 14" long and will now recruit to the fishery. In the absence of additional effort controls, the fishing mortality delayed by the size limit would be easily and quickly recouped. However, if effort controls are implemented at this time, these fish will receive continued protection and fishing mortality will decrease.

3. Adopt Alternative Schedule #2:

This alternative delays compliance with the interim target fishing mortality for all states, but does not delay compliance with the overfishing target.

Delaying compliance with the interim target fishing mortality until 1998 will give the Technical Committee and the states additional time to evaluate fishing mortality and effort reductions. It also addresses the inequity of different compliance dates. Maintaining the current goal of reducing fishing mortality to or below the overfishing definition in 1999 will prevent continued overfishing and loss of spawning stock biomass. Under this alternative, the Plan Review Team emphasizes that even if collection of all the necessary data begins immediately, there will not likely be an adequate time series to accurately estimate mortality by region or state and there will not be sufficient time to analyze impacts of proposed state regulations. However, the Team also recognizes that the available data indicate the tautog stock is reduced and overfished over much of its range, and that further overfishing will delay the recovery of spawning stock biomass and restoration of a healthy age structure.

SPECIAL NOTE

Some expressed concern about changing the compliance schedule because:

1. The tautog resource is at low levels and will not likely rebuild without strict conservation measures. Further, another year of fishing at current levels ($F > 0.5$) will delay initial stock rebuilding, will contribute to further declines in spawning stock biomass, and could contribute to truncation of the age structure. These are important considerations given the slow growth rate and long life span of tautog.

2. Postponing implementation of $F=0.24$ also reduces the incentive for those states that have already taken action or proposed management alternatives that meet the $F=0.24$ interim fishing mortality goal to follow through with these actions.

Therefore, states with management programs that achieve the $F=0.24$ interim fishing mortality target are strongly encouraged to maintain their programs to promote rebuilding the tautog resource. With tautog's localized and inshore-offshore movements, the benefits accruing from achieving and maintaining the $F=0.24$ goal would largely go to the state taking the initial conservation steps.