



Mid-Atlantic Fishery Management Council

800 North State Street, Suite 201, Dover, DE 19901

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Michael P. Luisi, Chairman | P. Weston Townsend, Vice Chairman

Christopher M. Moore, Ph.D., Executive Director

MEMORANDUM

Date: May 28, 2021
To: Chris Moore, Executive Director
From: Julia Beaty, staff
Subject: Black Sea Bass Commercial State Allocation Amendment

During their June 2021 meeting, the Council will discuss the recent decision by the Atlantic States Marine Fisheries Commission's (Commission's) Policy Board to remand a portion of Addendum XXXIII back to the Summer Flounder, Scup, Black Sea Bass Management Board, as well as the implications of this remand for the Council's Black Sea Bass Commercial Allocation Amendment. This memo provides background on this issue.

The following items are also enclosed for Council review:

1. Letter from Michael Pentony to Chris Moore dated May 18, 2021
2. Letter from Chris Moore to Michael Pentony dated May 21, 2021

The following additional information is not included behind the tab, but can be found at the links below.

1. The appeal of Addendum XXXIII by the State of New York and other background information on the appeal can be found [here](#).
2. The presentation by the State of New York on their appeal is available [here](#).
3. A summary of the ASMFC Policy Board discussion is available [here](#) (pages 13-17).
4. A recording of the ASMFC Policy Board discussion of this appeal is available [here](#).

Background

The Council and Atlantic States Marine Fisheries Commission's (Commission's) Summer Flounder, Scup, and Black Sea Bass Management Board (Board) jointly approved several changes to the management program for black sea bass commercial fisheries in February 2021. These changes included modifying the state allocations of the commercial black sea bass quota, adding the state allocations to the Council's Fishery Management Plan (FMP), and modifying the regulations for federal in-season closures. The Board adopted the new allocations through Addendum XXXIII to the Summer Flounder, Scup, and Black Sea Bass FMP, while the Council recommended these changes through an amendment to its FMP.

Under the allocation changes approved in February 2021, Connecticut's baseline allocation would increase from 1% to 3% of the coastwide quota to address its disproportionately low allocation compared to the increased availability of black sea bass in state waters. The allocations for all states would then be calculated by allocating 75% of the coastwide quota

according to the new baseline allocations (i.e., the historical allocations modified to account for Connecticut's increase to 3%) and 25% to three regions based on the most recent regional biomass distribution information from the stock assessment. The three regions are: 1) Maine-New York, 2) New Jersey, and 3) Delaware-North Carolina. The regional allocations would be distributed among states within a region in proportion to their baseline allocations, except Maine and New Hampshire would each receive 1% of the northern region quota. Because the allocations would be based in part on the regional biomass distribution from the stock assessment, they would be adjusted if a new assessment indicates a change to the biomass distribution

In March 2021, the State of New York appealed the allocation changes approved by the Board. The appeal argued that New York's baseline quota should increase similarly to that of Connecticut as it too had experienced a significant disparity between allocation and abundance/availability of black sea bass in Long Island Sound, which is shared by New York and Connecticut state waters. Additional information provided by New York through the appeal process suggested that during the years used for the historical allocations, adult black sea bass were rare in Long Island Sound and there was a minimal fishery in both Connecticut and New York. During this time period, New York's fishery primarily occurred in ocean waters. They also presented data showing that since that time, landings in New York and Connecticut originating from Long Island Sound increased along with increased availability of black sea bass.

The Commission's Policy Board considered this appeal in May 2021 and found that it was justified. They remanded the specific section of Addendum XXXIII addressing baseline allocations back to the Summer Flounder, Scup, and Black Sea Bass Management Board for corrective action to address impacts to New York's baseline allocation in a manner comparable to the consideration given to Connecticut. The Policy Board specified that the Management Board's corrective action should not result in a decrease in Connecticut's baseline allocation to less than 3% or decrease the percentage of quota allocated according to regional biomass distribution (i.e., 25%).

Next Steps

The Commission's Summer Flounder, Scup, and Black Sea Bass Management Board plans to address this remand during their August 2021 meeting.

Council staff recommend that the Council revisit their allocation recommendation in light of the Policy Board's remand, with the goal of maintaining identical allocations in the Council and Commission's FMPs. If the Council decides to change their allocation recommendation, they would meet with the Summer Flounder, Scup, and Black Sea Bass Management Board to address the remand during a joint meeting in August 2021.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
GREATER ATLANTIC REGIONAL FISHERIES OFFICE
55 Great Republic Drive
Gloucester, MA 01930

May 18, 2021

Dr. Christopher Moore
Executive Director
Mid-Atlantic Fishery Management Council
800 North State Street, Suite 201
Dover, DE 19901

Dear Chris,

We received your May 5, 2021, submission of the Environmental Assessment (EA) for the Black Sea Bass Commercial State Allocation Amendment. The EA describes the preferred alternatives adopted by the Council and the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Board in December 2020 and February 2021. Specifically, the action proposes to modify the black sea bass commercial state allocations, to add the state allocations to the Council's Fishery Management Plan (FMP), and to modify the Federal regulations for in-season closures.

As you know, at its May 6th meeting, the Commission's Policy Board voted to grant the State of New York's appeal of the corresponding addendum and has directed the Summer Flounder, Scup, and Black Sea Bass Board to reconsider New York's base allocation based on this decision. As a result, the state allocations in the addendum will be different than the allocations approved at the February joint meeting, and those contained in the EA submitted by the Council.

We have not yet begun our review of the EA or made a determination about our ability to approve any aspect of the amendment, including the provision that would add the state allocations to the Federal FMP. As stated during the February joint meeting, we opposed the addition of the state allocations to the Federal FMP for a number of reasons, including the agency resources required to manage the state allocations. During our review, we will carefully consider the merits of the Council's preferred alternatives relative to the National Standards and other applicable laws. With the Policy Board's decision to modify the state allocations in the addendum, the inconsistency between the two bodies' state commercial allocations will also be considered in our review.

We intend to start the Secretarial review for the amendment unless you notify us in writing that the Council intends to revisit the allocation decision in light of the changed circumstances. Once we commence our review, however, we would follow the Magnuson-Stevens Act's process for review and approval or disapproval of Council actions, and any additional changes desired by the Council would require a new and separate action.



If you or your staff have any questions, please contact Emily Keiley at (978) 281-9116.

Sincerely,

A handwritten signature in blue ink that reads "Michael Pentony". The signature is written in a cursive style with a large, sweeping initial "M".

Michael Pentony
Regional Administrator



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Christopher M. Moore, Ph.D., Executive Director

May 21, 2021

Mr. Michael Pentony
Regional Administrator
National Marine Fisheries Service
Greater Atlantic Region
55 Great Republic Drive
Gloucester, MA 01930

Dear Mike:

Thank you for your letter dated May 18, 2021 informing the Council that you intend to start Secretarial review of the Black Sea Bass Commercial State Allocation Amendment unless you receive notification from us that the Council intends to revisit the allocation decision. Your request relates to the Atlantic States Marine Fisheries Commission's Policy Board decision to remand the allocations back to the ASMFC Management Board after consideration of an appeal from the State of New York.

The Council has not yet had the opportunity to consider their prior allocation recommendation in light of the Policy Board's recent decision. However, the Council plans to discuss this matter during their meeting on June 10, 2021. If on June 10, the Council agrees to revisit their allocation recommendation, we will work closely with ASMFC to coordinate our activities in response to the appeal and develop identical recommendations through our joint process.

Please contact me with any questions.

Sincerely,

A handwritten signature in black ink that reads "C. Moore".

Christopher M. Moore, Ph.D.
Executive Director

cc: M. Luisi, W. Townsend, T. DiLernia, J. Beaty, B. Beal, E. Keiley