



**Mid-Atlantic Fishery Management Council**  
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## MEMORANDUM

**Date:** November 27, 2019  
**To:** Council and Board  
**From:** Julia Beaty, staff  
**Subject:** Black Sea Bass Commercial Allocation Addendum/Amendment

### Background

The black sea bass commercial quota is managed on a coastwide basis under the Mid-Atlantic Fishery Management Council's (Council's) Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). The Atlantic States Marine Fisheries Commission (Commission) divides the coastwide quota into state-by-state shares based on allocations percentages defined in their FMP. Three states - Delaware, Maryland, and Virginia - further divide their state allocations into individual fishing quotas (IFQs).

During the October 2019 joint meeting of the Council and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board), the Board initiated an addendum to consider modifications to the state allocations. The Council put forward a motion to "activate" a previously initiated Council amendment on black sea bass commercial issues. The intent of this motion was to consider, through an FMP amendment, the Council's role in state-by-state allocation decisions and to address the implications of coastwide quota management on states, as described in more detail below. The Council postponed a vote on their motion until the December 2019 joint meeting. At the December meeting, the Council should discuss their preferred next steps, including whether further development of a Council amendment is needed or if certain changes should be considered through a framework action or the specifications process.

### Coastwide Quota Management Issue

Under the Council's FMP and the federal regulations, the National Marine Fisheries Service Greater Atlantic Regional Fisheries Office (GARFO) has the authority to close the commercial fishery prior to the end of the year if the coastwide quota is projected to be fully harvested. This closure would apply to all federal waters in the management unit and all federal moratorium permit holders, regardless of where they fish. Federally permitted dealers would be prohibited from purchasing black sea bass during this closure. Board members have raised concerns about the potential for quota overages in some states resulting in a coastwide federal closure that would impact all states, including those which did not fully harvested their allocations. This could be especially problematic for IFQ states because IFQ holders may choose to harvest their individual

allocations late in the year due to market reasons. This puts them at risk of not being able to fully utilize their IFQs if the commercial fishery closes in-season.

To date, the black sea bass commercial fishery has not closed in-season, though landings have approached the quota prior to the end of the year. States closely monitor their landings and can request a quota transfer from another state if needed to account for minor overages. Typically, states implement measures (e.g., fishery closures, reduced trip limits) to prevent their black sea bass fisheries from exceeding their state allocation.

Recently, the Council and Board have expressed an interest in considering additional approaches to help prevent in-season coastwide closures from impacting states which have not fully harvested their allocations. Some consideration has been given to the differences between black sea bass and summer flounder quota management. Unlike black sea bass, the summer flounder state allocations are jointly managed by the Council and the Commission. GARFO has the authority to close the federal commercial summer flounder fishery in-season if it is determined that the inaction of one or more states will cause the commercial annual catch limit (ACL) to be exceeded. Closing once the ACL has been reached, rather than once the quota has been reached, could be considered for black sea bass; however, dead discards count towards the ACL and it is not currently possible to accurately estimate dead discards in a timely manner for in-season management. In addition, as discards are not currently evaluated for in-season management, it is not known if closing at the ACL, rather than the quota, would make it less or more likely that the black sea bass fishery would close in-season.

Another difference between black sea bass and summer flounder quota management is that states must pay back overages of their summer flounder allocations in a following year, regardless of whether or not the coastwide quota was exceeded. Under the Commission's FMP, states must pay back overages of their black sea bass allocations only if the coastwide quota is exceeded.<sup>1</sup> Compared to summer flounder, this could create a lesser incentive for states to avoid exceeding their allocations; however, as previously stated, the states have been successful in preventing a coastwide black sea bass quota overage.

An additional option could be to change the in-season closure regulations such that the commercial black sea bass fishery would close in-season in federal waters when 105% of the coastwide quota has been harvested, rather than 100%. This would provide an additional buffer to allow states which have not harvested their full allocations to come closer to doing so, while also preventing large coastwide quota overages. This assumes that states which exceed their allocations in-season will close their fisheries. GARFO has indicated that it may be possible to make such a change to the regulations through the specifications process.

### **Council Role In State Allocations**

As previously stated, the state commercial allocations are included in the Commission's FMP, but not the Council's FMP. At the October joint meeting, the Commission initiated an addendum to consider modifications to these allocations. They also agreed that all future Board discussion of this addendum would occur at joint meetings with the Council to allow for Council input during all stages of the process. This is currently a Commission-only action. If the Council wishes to have

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<sup>1</sup> The Commission's process for reconciling quota overages and applying paybacks as needed is described in Addendum XX.

a voting say in any changes to the state allocations, and if they wish to consider adding these allocations to the Council FMP, a joint action would be needed.

The Council initiated an amendment to address commercial black sea bass issues in March 2019. They agreed that the purpose of initiating this amendment was to dedicate staff time to these issues, but they decided to delay scoping and alternative development until after the Commission had further developed their alternatives. At the October 2019 joint meeting with the Commission, the Council discussed whether to “activate” this amendment and make it a joint action with the Commission addressing the state allocations and the coastwide quota management implications outlined above. They agreed to postpone a vote on activating the amendment until the December 2019 joint meeting with the Board. Through this amendment, the Council could consider a range of state allocation alternatives, including a no action alternative, which would allow changes to these allocations to continue to be made through a Commission-only process. If the Council were to take up an action to consider the state allocations, this would need to be done through an FMP amendment rather than a framework action. This would delay the Commission’s planned timeline for developing their addendum.

### **Decision Point**

As previously stated, the state commercial allocations are included in the Commission’s FMP, but not the Council’s FMP. At the October joint meeting, the Commission initiated an addendum to consider modifications to these allocations. They also agreed that all future Board discussion of this addendum would occur at joint meetings with the Council to allow for Council input during all stages of the process. However, this would still be considered a Commission-only action and even though the Council could be involved in the discussions they would not be able to vote on alternatives to be considered in the public hearing document or on any final action. Staff recommend that if the Council wants to be able to vote on alternatives, including alternatives that consider adding these allocations to the Council’s FMP, then they should move forward with a joint action at the December meeting.

If the Council decides to move forward with joint action, the Commission could continue to develop the addendum with consideration of a federal alternative. As part of the joint process, the Council would help choose alternatives for public hearings and vote on final action. If final action involved adding allocations to the Council’s FMP, Council staff would begin the process to add them to federal regulations.