

## **Potential options and challenges to institute state or regional quotas for the Snapper-Grouper Complex**

This report responds to the South Atlantic State-Federal Fisheries Management Board's request from its November 9, 2011 meeting for a white paper on implementation of state quotas for species contained within the South Atlantic Fishery Management Council's Snapper-Grouper Fishery Management Plan.

### **Problem to address:**

How can the states manage significant species in the Snapper-Grouper complex to ensure...

- Full utilization of the fishing quota?
- Extended fishing seasons?
- Sufficient monitoring and control of the quota?

One method proposed to address these problems is regional or state quotas of the Annual Catch Limits set under the Federal Fisheries Management Plan. Should the South Atlantic Board choose to implement state quotas for federally-managed species, the Board has multiple options, which range from an informal agreement to a joint management plan between ASMFC and the South Atlantic Fishery Management Council. Currently within the Commission, there are various examples of state or regional quotas in management, including spiny dogfish, summer flounder, bluefish, black sea bass, scup and striped bass. These plans provide a base on which to consider the different approaches to implementing state or regional quotas, including such factors as regulatory flexibility, overage consequences, and monitoring responsibility.

### **Summary:**

The paper presents four potential options for implementation of state or regional quotas: a joint management plan, a complementary management plan, emergency action, and an informal agreement among the states. For each of the options, the paper answers probable questions about the use of the option and its requirements and assignment of responsibility for such aspects as monitoring and enforcement. A joint plan, as with summer flounder in the mid-Atlantic, involves both the ASMFC Board and the Council in the amendment and management process. A complementary plan, like spiny dogfish, separates the management processes between the two bodies (Federal/Council and ASMFC Board); however, both processes focus on the same key aspects of quota, effort measures, and monitoring. This option can include state quotas that are only within the ASMFC plan. In addition, a hybrid approach, such as that used with black sea bass or scup in the mid-Atlantic, involves both management bodies in a joint plan, but the state quotas are contained within only the ASMFC plan. Using emergency action as an option can be quick but the public input process is more limited and occurs after the Board makes the management decision. Further, an emergency action is only valid if there is progress towards a management plan. An informal agreement option is presented, which brings flexibility and speed but lacks in accountability. Finally, possible species that may be candidates for regional or state quotas are listed.

The paper specifically chose to avoid discussion of possible allocation options and results, but rather focused on these potential options for implementing the process and challenges that the states may face with the process of state or regional quotas. Allocation is often the most contentious aspect of management. The paper recognizes this fact and wished to remain outside of that discussion while the merits of the potential process options are discussed.

Some specific concerns, other than allocation, arose from states. The most basic and essential were the ability to monitor the quota and to enforce a closure within the state waters. Regular monitoring of the quota allows states to utilize their full quota share while minimizing the risk of penalty for an overage in the following year. For all states, all Snapper-Grouper species are required to be landed through a federal dealer. All federal dealers must report at least weekly and electronically, which corresponds to the weekly monitoring threshold set in other existing ASMFC plans with state or regional quotas. For species within the Coastal Migratory Pelagics federal plan, there is more variance in the dealer landing requirements, with reporting ranges of weekly to monthly.

Enforcement of a closure also protects the state's fishermen and dealers from penalties the following fishing year, in addition to protecting the rest of the states from a premature federal closure of the fishery. In member states where the ability to respond and close a fishery, as well as set varying management measures, lies with the state fisheries agency, states are able to respond more quickly and better control the impacts of the quota for their fishery and dealers. In states where this ability lies elsewhere, whether within the legislature or dependent upon federal action, the challenge is much greater in order to benefit from a state quota system and mitigate impacts of overages.

Other specific concerns:

- Whether to count quota landed against location of the dealer (general approach) or homeport of vessel
- Whether states can require an additional state license to land quota, although these licenses already exist in some states
- Whether the allocations should remain the same or should a reconsideration be built into the plan, triggered by stock size, a specified time frame, or other aspect (some precedent for this approach)
- Whether state quotas and the resultant allocation of effort could make recovery of some stocks more difficult

## **Options to Implement State or Regional Quotas**

### Informal agreement among the South Atlantic states

- Agreed upon during South Atlantic Board meeting
- Quick process
- Non-binding
- No formal administrative process
- No administrative burdens
- Public input limited
- Short-term management solution

### Emergency Action through ASMFC

- Must pass by 2/3 vote at South Atlantic Board meeting
- Requires four public hearings within 30 days of passing
- Valid for 180 days and may be extended for up to two additional years
- Relatively short-term management solution
- May be used for species not covered by a FMP
- Public health, conservation of the resources, or an original goal of the FMP must be at risk due to unanticipated changes in the ecosystem, the stock, or the fishery
- Lack of full management process

### ASMFC complementary Fishery Management Plan

- Full management and public input process
- Requires multiple reviews by the South Atlantic Board, generally 18-24 months
- Long-term management solution
- Not necessary to meet with SAFMC and act jointly (i.e. setting quotas)
- Potential for lack of consistency between federal and state waters
- States are the responsible party for monitoring quotas
- States are the responsible party for closing state waters once quota is filled

### ASMFC/SAFMC joint Fishery Management Plan

- Full management and public input process
- Requires multiple reviews by the South Atlantic Board, generally 18-24 months
- Long-term management solution
- Requires an amendment to the Federal Fishery Management Plan
- Necessary to meet with SAFMC and act jointly
- Additional administrative burdens due to federal laws and requirements
- NMFS is the responsible party for monitoring quotas
- States are the responsible party for closing state waters once quota is filled; NMFS closes federal waters

### **Key Aspects to consider**

- How is the total coastwide quota set and by whom?
- Which partner is primarily responsible for monitoring the landings/quota?
- How will an overage of the quota be addressed?
- How will an underage of the quota be addressed?
- Which partner is primarily responsible for closing the fishery once the quota is filled?
- Will transfers of quota between regions/states be allowed? What approval is needed to complete a transfer?
- What flexibility will regions/states have to implement management measures?

*How is the total coastwide quota set and by whom?*

Joint management plan: The Council and the Commission must agree on same yearly quota and pass the same motion. If state quotas are within both plans (summer flounder), the Council and the Commission must agree and pass the same motion regarding state quotas as well. Otherwise, the Commission may set state quotas separately (black sea bass, scup). This process generally occurs during a joint meeting.

Complementary plan: The Council and the Commission are not bound to agreeing on the same quota, although differences may complicate management and enforcement. The Commission sets state quotas separately, based on the total quota set.

Emergency action: The Council and the Commission are not bound to agreeing on the same quota, although differences may complicate management and enforcement. The Commission sets state quotas separately, based on the total quota set.

Informal agreement: The Council and the Commission are not bound to agreeing on the same quota; however, the federal quota would be the only formal quota in place.

*Which partner is primarily responsible for monitoring the landings/quota?*

Joint management plan: The NMFS takes the lead on monitoring the quota, and states are expected to assist. In practice, many of the states have taken a large role in quota monitoring to ensure timely tracking of the quota. All plans currently in place require dealers to report landings weekly to provide timely monitoring of the quota.

Complementary plan: States are primarily responsible for tracking their quota. Monitoring requirements include weekly reporting of dealer landings to the state to provide timely tracking of the quota. Under the spiny dogfish plan, states are also required to report state dealer landings to the NMFS on a weekly basis.

Emergency action: States would be the primary party responsible for monitoring their quotas. Monitoring requirements would be essential to successful tracking and management.

Informal agreement: States would be the primary party responsible for monitoring their quotas. Monitoring requirements would be essential to successful tracking and management. Although state quotas may be non-binding, the federal quotas would still be in place.

*How will an overage of the quota be addressed?*

Joint management plan: Within current plans, states with an overage must pay back that overage amount in the following year. When state quotas are included in both plans (summer flounder), the federal response includes a state-by-state payback of any overage. If state quotas are not within the federal plan (black sea bass, scup), the federal government only considers a payback if the total coastwide quota is exceeded. State-by-state paybacks are addressed by the Commission.

Complementary plan: The federal plan addresses an overage separately from the Commission plan requirements. The Commission plan handles the state-by-state overages.

Emergency action: The federal plan will address an overage of the coastwide quota. The Board may choose whether to include state-by-state paybacks of overages within the action.

Informal agreement: The federal plan will address an overage of the coastwide quota. The informal agreement may include measures to address state-by-state overages, but these as well as the state quotas are non-binding.

*How will an underage of the quota be addressed?*

Joint management plans: No current provisions for an underage exist within the joint plans; however, there are provisions for a rollover of up to 10% within the New England Fishery Management Council's Multi-Species Fishery Management Plan. Provisions for the rollover would have to exist within the federal and state plans, none of which currently exist in the considered Snapper-Grouper or Coastal Migratory Pelagics species.

Complementary plan: A rollover provision could be included within the Commission plan; however, the total quota allowed may not be consistent with what is included in the federal plan and may complicate management and enforcement. Currently, there is a provision within the spiny dogfish plan to allow up to a 5% rollover of quota if unused.

Emergency action: A rollover provision could be included within the Commission plan; however, the total quota allowed may not be consistent with what is included in the federal plan and may complicate management and enforcement.

Informal agreement: A rollover provision could be included within the Commission plan; however, the total quota allowed may not be consistent with what is included in the federal plan, which could cause a premature closing of the fishery under the federal standards.

*Which partner is primarily responsible for closing the fishery once the quota is filled?*

Joint management plan: When states are notified by the NMFS that their quota is filled (or is projected to be filled), states are responsible for closing their waters to harvest and to prohibit landings. Once all state waters are closed (i.e. the entire quota is filled), the Regional Director closes federal waters. In addition, the summer flounder plan (where state quotas are included in both the Commission and federal plans), the Regional Director may close federal waters prior to all state waters closing if one or more state's actions may cause the total quota to be exceeded.

Complementary plan: States are responsible for closing their state waters once they determine that the quota is met. As there is no formal arrangement between the Commission and the federal plan, there is no mention of the Regional Director closing the federal waters. As under any other federal plan, however, once the quota is filled, the federal waters would be closed.

Emergency action: States would be responsible for closing their state waters once they determined that the quota was met. As the emergency action would be taken by the Commission and not likely within the federal structure, there would likely be no mention of the Regional Director closing the federal waters. As under other federal plans, however, once the quota was filled, the federal waters would be closed.

Informal agreement: States would be responsible for closing their state waters once they determined that the quota was met. As these quotas would not be binding, there would be little recourse should a state decide to stay open longer. The federal quota would be the ultimate cap and would trigger closure of the federal waters once filled.

*Will transfers of quota between regions/states be allowed? What approval is needed to complete a transfer?*

Joint management plan: If the state quotas are included in both the Commission and federal plans (summer flounder), transferring or combining quota requires mutual agreement among the transferring states and concurrence from the NMFS Regional Director. If the state quotas are included only within the Commission plan (black sea bass, scup), a transfer requires mutual agreement among the states and notification of the Commission via staff. Under both circumstances, a transfer of quota is required to be used within the same season, and the receiving state is responsible for any overages.

Complementary plan: Similar to joint plans where the state quotas are only within the Commission plan, a complementary plan involves only the Commission. The spiny dogfish plan only requires notification and review by the Commission's Executive Director or staff, who forward the transfer request to the Management Board. Additionally, the plan restricts transfers to states with state quotas and does not allow transfers from the region to states or vice versa. As with a joint plan, the receiving state is responsible for any overages.

Emergency action: As with a complementary plan, a transfer between states would only involve the Commission. Within the action, the Board may specify the required notification and review

for a transfer among willing states, which could include Board, staff, or technical review. Additionally, the Board may wish to detail the consequences of an overage on transferred quota.

**Informal agreement:** As the agreement is non-binding, a transfer of quota between states would be similarly informal. Further, any sort of overage on transferred quota would not be binding or include any formal consequences unless a overage of the coastwide quota occurred, triggered accountability measures contained within the federal plan.

*What flexibility will regions/states have to implement management measures?*

**Joint management plan:** Management measures contained within the federal plan apply to the states as well. Flexibility within the plan can allow each state to optimize their regulations to benefit their industry. Federal law requires measures to prevent overfishing and mandates rebuilding, if necessary. However, harvest, in most cases, must be landed in a state, where state regulations dictate landings rules. Specificity of the management measures, within the federal and state plans, can be lesser or greater. Additionally, conservation equivalency allows states to institute different measures, as long as the resulting impacts on the fishery are the same. Thus, states can use the plan's flexibility to establish regulations that meet their fishery's needs.

**Complementary plan:** The management measures within the Commission's plan detail the requirements for state waters. Movement by the fishery between state and federal waters can subject the fishery to measures contained within the federal plan. As with a joint management plan, federal law imposes certain management requirements, but state regulations dictate compliance when landing the catch, despite where harvest occurred. Thus, depending on the specificity of the plan's measures, states can have the flexibility to modify their regulations to fit their fishery's needs, such as spawning closures, seasons, and trip limits.

**Emergency action:** As with a complementary plan, both Commission and federal restrictions can be included. The state's ability to set landing regulations gives it additional control and flexibility, in addition to the diverse management opportunities afforded under conservation equivalency, if included. An emergency action can set the basic requirements to prevent overages but still allow the needed flexibility to optimize the fishery for the state.

**Informal agreement:** States have the option to implement management measures within state waters, although measures agreed upon by all of the states would be non-binding. These measures, although not required, could be formally implemented by the states. However, the overall benefits of these measures may not be fully realized by the state's fishery, should the measures limit their fishery's access to the federal quota while other states' fisheries are not limited. An agreement to management measures would be non-binding among the states, and so violations would include few, if any, state-specific consequences.

## **Suggested candidate species (commercial) for regional or state quotas**

Note: 2012 ACLs do not include any Accountability Measures that may be implemented

### Black Sea Bass

2012 ACL: 309,000 pounds

2011 landings: 342,361 pounds

2011 season length: 45 days, closed 15-July (opened 1-June)

### Vermillion Snapper

2012 ACL: 315,523 pounds (January – June); 302,523 pounds (July – December)

2011 landings: 311,522 pounds (January – June); 546,981 pounds (July – December)

2011 season length: 69 days, closed 10-March (January – June); 122 days, closed 30-Sept (July – December)

### Snowy Grouper

2012 ACL: 82,900 pounds gutted weight

2011 landings: 36,268 pounds (as of 9-December-2011)

2011 season length: still open (as of 9-December-2011)

### Gag Grouper

2012 ACL: 352,940 pounds gutted weight (Amendment 16)

2011 landings: 299,194 (as of 9-December-2011)

2011 season length: still open (as of 9-December-2011)

### Red Grouper

2012 ACL: 284,680 pounds whole weight (proposed Amendment 24)

2011 Red, Black, and Gag Grouper ACL: 662,403 pounds gutted weight

2011 Red, Black, and Gag Grouper landings: 510,726 (as of 9-December-2011)

2011 season length: still open (as of 9-December-2011)

### Sheepshead

2012 ACL: N/A (removed from Snapper-Grouper FMP as part of Omnibus ACL Amendment)

2011 landings: Unknown

2011 season length: N/A (no quota or season)

### Triple Tail

2012 ACL: N/A

2011 landings: Unknown

2011 season length: N/A (no quota or season)