

Atlantic States Marine Fisheries Commission

**ADDENDUM V TO THE SCUP FISHERY MANAGEMENT
PLAN**

Summer Period Commercial Scup Allocation



Approved by the Summer Flounder, Scup, and Black Sea Bass
Management Board on February 21, 2002

Background

Scup is jointly managed by the Atlantic States Marine Fisheries Commission (ASMFC) and the Mid-Atlantic Fisheries Management Council (MAFMC). The Fishery Management Plan for Scup was approved in March 1996 by the ASMFC, and the MAFMC approved the scup management measures as Amendment 8 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan in January 1996.

Addendum 1 to the Scup FMP provides that the annual coastwide quota is divided among three periods. The winter I period runs from January 1 through April 30, the summer period runs from May 1 through October 31, and the winter II period runs from November 1 through December 31. Table 1 summarizes the allocation of the commercial quota by period. During the winter periods, the quota is available coastwide and is restricted through the implementation of trip limits. Addendum 1 includes a state-by-state quota system that is in effect during the summer period. In the state-by-state system, quotas are distributed to the states based on their percentage share of commercial landings for the period May through October, 1983-1992.

In June of 1997, the Commonwealth of Massachusetts filed a lawsuit against the Secretary of Commerce. The lawsuit contends that the historical data used to determine the quota shares described in Addendum 1 to the Scup FMP underestimated the commercial landings of scup in Massachusetts. This underestimation has resulted in the state's quota during the summer period to be set too low and is, therefore, in violation of various provisions of the Magnuson-Stevens Fishery Conservation and Management Act. Massachusetts also alleged that the resulting quota discriminated against residents of the Commonwealth.

On April 27, 1998, the U.S. District Court for the District of Massachusetts ordered that the portion of the Federal fishery management plan establishing a state-by-state quota system during the summer commercial scup fishery is void. The Secretary of Commerce appealed the District Court's decision. The Secretary stated in the appeal that the District Court misunderstood the data and that the National Marine Fisheries Service used the best available data to establish the state-by-state quota. The Commonwealth of Massachusetts prevailed in the appeal and the state-by-state quota system for the summer period has been abolished in the Federal FMP.

The District Court's decision technically did not impact the state-by-state quota system contained in the ASMFC Scup FMP. Therefore, the state-by-state quota system described in Addendum 1 of the Scup FMP is still valid and in place with respect to the FMP adopted by the Commission under the terms of the Compact and the ISFMP Charter. The differences between the ASMFC FMP and the Federal FMP result in two different management regimes in place during the very valuable summer fishery.

Table 1. Allocation of the commercial quota by period.

Quota Period	% of Commercial Allocation
Winter I	45.11%
Summer	38.95%
Winter II	15.94%

The summer quota period extends from the beginning of May through the end of October each year.

Statement of the Problem

In 1999, 2000 and 2001 the Management Board approved separate Emergency Rules to establish state quota shares that differ from Addendum 1 to the Fishery Management Plan for Scup. The Emergency Rule that was in effect for the summer 2001 fishery expired on October 6, 2001. This addendum creates state-specific shares of the summer period quota that will remain in place until the Management Board takes direct action to modify them.

Summer Management Program and Performance

The summer 2001 commercial scup fishery was managed through an Emergency Rule that was approved by the Summer Flounder, Scup and Black Sea Management Board on April 6, 2001. Table 2 details the state percent share, summer 2001 quota, summer 2001 landings and the summer 2001 overage (if any).

Table 2. Summer 2001 state percent share, quota, landings and overages.

State	% of Summer Quota	Summer 2001 Quota Adjusted for 2000 Overages (Pounds)	Summer 2001 Landings ¹ (Pounds)	Summer 2001 Overage (Pounds)
ME	0.1210%	2,034	0	0
NH	0.0000%	0	0	0
MA	21.5853%	362,849	405,153	42,304
RI	56.1894%	944,544	904,152	0
CT	3.1537%	53,014	52,502	0
NY	15.8232%	253,290	253,567	277 ²
NJ	2.9164%	30,054	13,950	0
DE	0.0000%	0	0	0
MD	0.0119%	200	0	0

VA	0.1650%	2,774	0	0
NC	0.0249%	419	5	0
Total	100.0000%	1,638,837	1,629,329	0

¹ The 2001 summer landings are based on the NMFS weekly quota report through October 27, 2001.

² The State of New Jersey transferred 18,971 lbs. to the State of New York on December 7, 2001. The quotas (and overages where applicable) of both states have been adjusted accordingly.

The state shares for the summer 2001 fishery were established based on the base period of 1983-1992 after the database was updated to include the additional landings from Massachusetts.

This Addendum V to the Scup Fishery Management Plan establishes the state-specific shares of the 2002 summer period quota, as summarized in Table 3.

Table 3. State percent share of the summer period quota. Shares calculated based on the landings from 1983-1992 after the additional landings from Massachusetts landings were included in the database.

State	% of Summer Quota	Summer 2002 Quota ^a
ME	0.1210%	3,657
NH	0.0000%	0
MA	21.5853%	610,116
RI	56.1894%	1,698,336
CT	3.1537%	95,321
NY	15.8232%	477,982
NJ	2.9164%	88,148
DE	0.0000%	0
MD	0.0119%	359
VA	0.1650%	4,987
NC	0.0249%	752
Total	100.0000%	3,022,520

^a State quotas for 2002 have been adjusted for 2001 overages