

**NATIONAL MARINE FISHERIES SERVICE**

**AND**

**U. S. FISH AND WILDLIFE SERVICE**

**2005 WORK PLAN**

**TO SUPPORT THE INTERSTATE FISHERIES MANAGEMENT**

**EFFORTS OF THE**

**ATLANTIC STATES MARINE FISHERIES COMMISSION**

**May 2005**

## **Executive Summary**

This work plan documents how National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) will support the Interstate Fisheries Management Program (ISFMP) of the Atlantic States Marine Fisheries Services (ASMFC) in FY 2005, as required under the Atlantic Coastal Fisheries Cooperative Management Act (ACA). This is a working document, which is updated after each joint NMFS/USFWS annual meeting, or as needed. Actions that have been identified for completion during FY 2005 are listed at the beginning of this work plan, and are further discussed within the document. A complete history of regulatory activities undertaken in support of the ACA is also provided.

## **Key FY 2005 Action Items for NMFS and USFWS**

1. NMFS and USFWS staff will develop a strategic plan for activities in support of the ACA, including ACCSP activities.
2. NMFS and USFWS will continue to explore opportunities for Federal Agency support of ASMFC science and management needs.
3. NMFS, USFWS, and ASMFC will explore means to obtain EFH designations for species managed under authorities, other-than MSA, such as ACA.
4. NMFS and USFWS will continue regulatory activities associated with ASMFC's recommendation to open the EEZ to the harvest of striped bass.
5. NMFS will transfer management authority for Red Drum from the South Atlantic Fishery Management Council (Federal), under the MSA, to ASMFC (State), under the ACA.
6. NMFS and USFWS will keep the State Directors informed about Federal activities under this MOU work plan.

Additional action items may be identified in each section of this MOU work plan.

## **Introduction**

The ACA provides for effective management of interjurisdictional fisheries that occur predominantly within 3 miles of the Atlantic coast. Under this Act, the Secretary of Commerce (Secretary), in cooperation with the Secretary of Interior, support interstate fishery management efforts of the ASMFC through cooperation, management, and data analysis; law enforcement; habitat conservation; research, including biological and socioeconomic; and fishery management planning. The ACA encourages interstate fisheries management and elevates the role of the ASMFC in the development of Interstate Fisheries Management Plans (FMPs).

Under the ACA, passed in December of 1993, the NMFS, in cooperation with the USFWS, is charged with supporting the interstate fisheries management efforts of the ASMFC. In October 2002, NMFS established the State Federal Fisheries Division (SF8) in its Office of Sustainable Fisheries to serve as the Agency's focal point for coordination of interstate fisheries management.

A Memorandum of Understanding (MOU) between NMFS and the USFWS establishing procedures for supporting the ASMFC was originally signed in March of 1994 and updated in 1997, and again in 2002 (Appendix A). The MOU establishes the membership of a joint NMFS and USFWS Committee (MOU Committee), calls for annual meetings of the MOU Committee to coordinate support of the ASMFC, and requires the development of an annual work plan describing how the two agencies will support the ASMFC. This document constitutes the work plan required by the MOU and describes actions and procedures that NMFS and USFWS should follow to fulfill their responsibilities under the ACA. This work plan is updated periodically to identify agency activities planned for the upcoming year and to document accomplishments. At the November 4, 2003, meeting, the MOU Committee decided to change the format and focus of the meeting and work plan to be more pro-active in planning for the future rather than focusing on reports of accomplishments of the past year.

In addition to the ACA MOU, an MOU was signed in 1995 between NMFS, the USFWS, the ASMFC, and the Atlantic Coastal states, establishing the Atlantic Coastal Cooperative Statistics Program (ACCSP) to develop an improved state-federal fishery statistics program, as mandated by the ACA. The ACCSP MOU was updated in 1999 and again in 2002, with the 2002 MOU Addendum establishing the ACCSP as a separate program no longer a part of the ASMFC. This separation was to deal with public and industry concerns that management of the data warehouse should be separate from the fisheries management and regulatory processes. The ACCSP is co-located within the ASMFC for administrative convenience and cost-effectiveness, but the structure is such that the ACCSP is a partnership that includes the ASMFC, but is no longer an ASMFC program. This separation is maintained through its staff structure, decision-making processes and committees. The MOU and the 2 addenda can be viewed on the ACCSP website at: <http://www.accsp.org/muamend.htm>. The ACCSP will continue to be recognized in this work plan since it continues to be supported by ACA funds.

This work plan is divided into five major sections:

- 1) Funding;
- 2) Personnel;
- 3) Outreach;
- 4) Regulations; and
- 5) Management Planning.

The MOU Committee has determined that this work plan will serve not only as a planning document, but also as an historical reference to provide a chronology of actions and activities addressed by NMFS and USFWS and the MOU Committee. Appendix B contains summaries of actions that have occurred under each of the five work plan sections since the MOU was first initiated in 1994.

### **1) Funding**

Distributions of ACA funds to the States, ASMFC, ACCSP, USFWS, and NMFS for FY 2000 - FY 2005 are provided in Table 1. A breakdown of NMFS and USFWS' spending plans for FY 2005 is provided below. Historical distributions of funds for 1996 through 1999 are provided in Table 8.

Unobligated year end funds within the Department of Commerce are subject to review and possible reallocation to other programs. All efforts are made to expend all funds each year. If all apportioned funds will not be utilized in any given year, a strategy for how they should be used by NMFS as year-end funds or carried over to the following year must be developed. SF8 will work with the ASMFC on strategies to address these funds, should this situation occur.

Expenditures to States are tracked through grant monitoring. There are no current procedures for annually tracking ACA expenditures of funds provided to the Services. However, the Services will ensure that Federal activities funded with ACA monies are linked to priorities identified in the ASMFC Annual Action Plan or to other longer-term priorities. In addition, beginning in 2005, SF8 will request year-end expenditure reports from both Services.

#### Proposed FY 2005 Spending Plans

##### NMFS - NER

Total Requested: \$278.2K

\$108.2K - Transfer salary for lobster management staff

\$30K - ASMFC travel

\$35K - Extension of contract for review of lobster historical participation applications/ACA project oversight

\$50K - New gear, needed for Northern Shrimp Survey

\$40K - To expand the northern shrimp survey to a 4-week, 20-sea day survey to provide sufficient information for management of the fishery (as requested by the Northern Shrimp Technical Committee)

\$15K - to fund additional ACA-related travel for Center and Regional Office staff

#### NMFS - SER

Total Request: \$121.13K

Southeast Fisheries Science Center:

\$57K - continue menhaden sampling program

\$18K - continue protected resources aerial survey

\$31.5K - ACA related travel

Southeast Regional Office:

\$14.63 - ACA related travel

#### NMFS - HQ Office

Total Request: \$71K

F/SF8 (\$20K), F/ST (\$26K), F/HC (\$13K), F/PR (\$8K), and NCBO (\$4K) to support ACA related travel

#### USFWS - Region 4

\$35K - Support ASMFC Process

\$15K - Tar River Anadromous Fish Spawning Habitat Characterization

#### USFWS - Region 5

\$5K - Tagging database for striped bass and Atlantic sturgeon recaptures

\$5K - Support management activities, ASMFC Meetings; Plan Writers, Technical Committees, Subcommittees

\$10K - Evaluation of the Status of American Eel Population

\$10K - Atlantic Sturgeon Stock Assessments and Genetic Characterization and Risk Assessment of Hatchery Production on Wild Stock

\$20K - American Shad and River Herring Restoration - Central NE Watersheds

Total USFWS (Regions 4 + 5): \$100K

## **2) Personnel**

NMFS and USFWS personnel are eligible and encouraged to serve on all ASMFC fisheries management boards, technical committees, and process committees, and may be appointed to other ASMFC groups. These teams play an important role in developing and monitoring FMPs.

Under its standards and procedures for the Interstate Fisheries Management Program, the ASMFC forms plan development teams (PDTs) and plan review teams (PRTs). These teams

are appointed by the ASMFC's fisheries management boards. NMFS and USFWS will continue to participate on most groups supporting the ASMFC's fisheries management program and coordinate activities between the two agencies. Tables 2 and 3 list current NMFS and USFWS membership on ASMFC boards, committees, and PDTs and PRTs. Beginning in FY 2002, funds were permanently transferred from the ACA account to the Northeast Regional Office to support one staff position dealing with American Lobster issues.

NMFS and USFWS personnel also serve on a variety of ACCSP technical committees, the Operations Committee, and the policy-level Coordinating Council. The technical committees develop the program standards for fisheries-dependent data collection and managements. The Operations Committee operates as a general steering committee and makes summary recommendations to the Coordinating Council, which is the decision-making body of the ACCSP. Tables 2 and 3 also list current NMFS and USFWS membership, respectively, on major ACCSP committees.

#### Proposed FY 2005 actions related to personnel

1. NMFS and USFWS will continue to explore opportunities for personnel to address ASMFC stock assessment needs.
2. NMFS and USFWS staff will continue to provide updates of Board and Committee membership for inclusion in the work plan.

### **3) Outreach**

The ACA provides authority for managing coastal marine fisheries, yet both the general public and many fishermen might be unfamiliar with the Act's various intricacies and the additional responsibilities given to NMFS, USFWS, States, the ASMFC, and the ACCSP. The ASMFC has developed an outreach program to inform commercial and recreational fishermen about its operations, and has produced an information brochure. The ACCSP has developed informational materials to inform a variety of constituents about their program and data warehouse, and routinely assists partners with developing outreach materials for new data collection programs initiated to meet ACCSP standards. NMFS continues to present information to the public about the ACA through the SF8 website and outreach efforts.

SF8, USFWS, ASMFC, and ACCSP staff have developed Internet Websites, which address ACA issues. These websites include:

- NMFS- [[http://www.nmfs.noaa.gov/sfa/state\\_federal.htm](http://www.nmfs.noaa.gov/sfa/state_federal.htm)]
- ASMFC- [<http://www.asmf.org/>]
- ACCSP- [<http://www.accsp.org/>]
- USFWS- [<http://fisheries.fws.gov>]

The MOU Committee will continue its efforts to improve the Work Plan's Outreach element, and enhance communications by the Services with ASMFC in the management of the coastal fisheries. NMFS and USFWS' regional office public affairs programs will ensure that effective outreach is maintained. In addition the states should be encouraged to use some of the ACA funding for outreach efforts.

#### Proposed outreach activities for FY 2005

1. NMFS and USFWS staff will continue to incorporate outreach concerns into the work plan, as part of each general activity, rather than as a separate effort.
2. NMFS will provide USFWS with an updated PowerPoint presentation to be used as an outreach tool and as an example of a presentation to show ASMFC/NMFS/USFWS roles and responsibilities. This presentation is currently being updated to reflect recent activities and changes in various processes related to implementation of the ACA.
3. Once the work plan is updated, NMFS will send a copy of the 2004 MOU Committee Meeting minutes and the FY 2005 Work Plan to the State Directors, with an explanation of the Committee's purpose.

#### **4) Regulations**

In the absence of a Federal Fisheries Management Plan under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the ACA gives the Secretary of Commerce the authority to implement regulations in the Exclusive Economic Zone (EEZ) that are compatible with the effective implementation of an ASMFC FMP. Federal regulations covering Atlantic Coastal Fisheries Cooperative Management can be found at 50 CFR Part 697. In addition, the ACA gives the Secretary of Commerce, in consultation with the Secretary of Interior, the authority to impose a moratorium on fishing for certain species in state waters, if a state has failed to comply (noncompliance) with conservation measures in an ASMFC FMP.

The Secretary delegated his authority under the ACA to the Assistant Administrator for Fisheries (AA) on June 4, 1996, with the condition that the Secretary be advised before any final action is taken with respect to declaring a moratorium under the noncompliance provision of the Act. Overall, the delegation of authority to the AA has simplified the regulatory process and reduces the time needed to implement measures.

Operational guidelines for development and implementation of fishery management actions under the ACA and Atlantic Striped Bass Conservation Act (ASBCA), are currently being reviewed and will be available on the SF8 website when completed. Procedures for determining and establishing a moratorium are detailed in Appendix C. In the development of regulations, NMFS is required to follow the Administrative Procedures Act, the National Environmental Policy Act, Endangered Species Act, all Executive Orders, and other requirements. NMFS will publish supporting documents with proposed and final rules, and gather public comments before

finalization of an action; these procedures will include public comment periods for proposed and final rules.

### EEZ Regulations

Table 4 provides a summary of all EEZ regulations implemented to date, under authorities of the ACA and ASBCA, and four additional management actions, two on American lobster and one on Atlantic striped bass and red drum, are currently under development. Further details on these actions are provided in Table 4.

### Noncompliance Actions

A history of noncompliance actions is provided in Tables 5a and 5b. There are no noncompliance actions currently underway.

### Litigation for EEZ or Noncompliance Regulations

A history of litigation under the ACA and ASBCA is provided in Table 6.

### Proposed regulatory activities for FY 2005

1. NMFS and USFWS will develop guidance for joint development of striped bass regulations and noncompliance actions.
2. NMFS and USFWS will continue regulatory activities associated with ASMFC's recommendation to open the EEZ to the harvest of striped bass.
3. Transfer of management authority for Red Drum from the South Atlantic Fishery Management Council (Federal), under the MSA, to ASMFC (State), under the ACA. For more details on this action, see Table 4.
4. NMFS anticipates a fifth year for an exempted fishing permit (EFP) for Limuli Laboratory to collect horseshoe crabs data and biomedical purposes, and a fifth year for a scientific research activity letter of acknowledgment for Virginia Tech. to conduct a horseshoe crab trawl monitoring survey for the Atlantic coast. (See Table 7 for information on EFPs and Scientific Research Activity Letter of Acknowledgments).

## **5) Management Planning**

### Overview

The ACA directs the Secretary, in cooperation with the Secretary of the Interior, to develop and implement a program to support the ISFMP of the ASMFC. In accordance with the Act, areas of

support are fisheries management planning, statistics, research, law enforcement, and habitat protection.

The ASMFC Interstate Fisheries Management Program Policy Board, on which NMFS and USFWS are represented, provides for overall coordination of fisheries management for the ASMFC. Within NMFS and USFWS, fisheries management, fisheries statistics, habitat protection, and law enforcement programs are the responsibility of separate line offices. In addition, stock assessment and research functions that collect and analyze data to support ASMFC FMPs are managed through NMFS' Science Centers and the Biological Research Division of the US Geological Survey (BRD) in the Department of the Interior.

Fisheries management, statistics, and law enforcement programs have formalized structures, through the ASMFC's fishery management board and/or committee memberships, within the ASMFC fisheries management programs. Membership on these groups allow for integration of information into the fisheries management planning process. Fisheries-dependent statistics program standards and a coastwide data warehouse are being developed within the ACCSP, and are coordinated with the ASMFC and all partner agencies.

Stock assessment programs are coordinated to support ASMFC functions through the individual planning programs within the NMFS' Science Centers and the BRD. Input from the NOAA Chesapeake Bay Program Office is also incorporated into ASMFC fishery management planning through Chesapeake Bay Stock Assessment Committee (CBSAC) activities. Coordination with ASMFC is carried out through ASMFC staff, ASMFC's Interstate Fishery Management Boards, NMFS' Northeast Fisheries Science Center's Stock Assessment Workshop (SAW), and the Southeast Data, Assessment and Review process. Also, the ASMFC Executive Director serves as one of a five-member group on the Northeast Regional Coordinating Council, which prioritizes stock assessment work on State, Federal, and Council species in the Northwest region.

Research programs of NMFS and the BRD are integrated with the needs of the ASMFC through *ad hoc* interactions with ASMFC staff, ASMFC fisheries management boards, NMFS' Southeast Region's Southeast Area Monitoring and Assessment Program (SEAMAP), the BRD through USFWS intermediaries, and BRD attendance at NMFS/USFWS MOU Committee meetings.

NMFS and USFWS are also increasing efforts to support the development of multi-species modeling and research activities and will support ASMFC's inclusion of ecosystem-based fisheries management principles in future FMPs and Amendments, as there is a growing recognition of the needs for these approaches. NMFS and USFWS staff will continue to play a key role in the planning, development and implementation of this process. Current research activities (NMFS, USFWS, and ASMFC directed) must be integrated to meet ASMFC objectives. This will be achieved through personal interactions with ASMFC staff, individual species management boards, and through the Management and Science Committee's Multi-species Subcommittee. NMFS and USFWS will support ASMFC inclusion of multi-species interaction sections within FMPs or Amendments, as they are developed. This section will

include summaries of the significant interactions of the FMP-specific species with co-dependent species and its fisheries.

BRD staff has provided significant contributions to the improvement of analyses of cooperative tagging data sets (striped bass) and in training other researchers in modeling methods.

Habitat protection programs are integrated into the ASMFC fishery management-planning program on a continuing and increasing basis. Lines of communication among the Services' habitat personnel are being strengthened with ASMFC staff and other Federal agency fisheries management personnel who serve on ASMFC fisheries management boards and technical committees. The Habitat Committee of the ASMFC is working to ensure adequate input into the habitat sections of the ASMFC's FMPs. The Services will continue discussions on how best to support the ASMFC Habitat Program, including future identification of specific tasks in this MOU Work Plan.

NMFS and USFWS will discuss how Essential Fish Habitat (EFH) goals can continue to be integrated into habitat sections of FMPs, beginning with those species that have joint state-federal management; continue to provide information/data and staff resources for development of the ASMFC anadromous fish species habitat background paper supporting the habitat sections of FMPs. In addition, the two agencies will discuss how to proceed on separate, parallel, or joint policy and guidance documents on EFH, including submerged aquatic vegetation. Other efforts that NMFS and USFWS will contribute towards include: dam decommissioning and/or removal, development of a recovery for Atlantic salmon; completion of the joint policy under section 18 of the Federal Power Act related to fishway; and a cooperative effort related to dredging and dredged material disposal.

Protected and endangered species programs are now more closely coordinated with FMPs than in the past. These programs can have dramatic impacts on how fishery management is conducted on species under ASMFC FMPs. ASMFC has established a Protected Resource Committee, and NMFS and USFWS will continue to increase efforts to support ASMFC efforts in this area, including inclusion of protected resource concerns in FMPs and Amendments. NMFS and USFWS' protected resource staff are encouraged to participate in MOU and appropriate ASMFC planning and development meetings. A protected resource section has been incorporated into the FMP development and Amendment process. NMFS has two representatives on the Protected Resource Committee.

Specific NMFS and USFWS Research and Statistics Activities that support ACA management, include:

NEAMAP and SEAMAP - NEAMAP and SEAMAP are state-federal regional programs for the coordination of fisheries-independent data collection activities. NMFS and USFWS personnel serve as members of the SEAMAP-South Atlantic Committee, the South Atlantic State/Federal Fishery Management Board, the NEAMAP Operations Committee, and the NEAMAP Board.

ACCSP is a cooperative state-federal program to design, implement and conduct marine fisheries statistics data collection programs, and to integrate those data into a single data management system that will meet the needs of fishery managers, scientists, and fishermen. The data collection and management program includes statistics for commercial, recreational, and for-hire fisheries on: catch and effort; tracking of vessels, fishermen, and dealers; biological and bycatch; and socio-economics. NMFS and USFWS personnel serve as members of the ACCSP committees (see Tables 2 & 3). The ACCSP continues to implement the Standard Atlantic Fisheries Information System (SAFIS). Rhode Island and Maryland have adopted this system with Maine, New Hampshire, Connecticut, Massachusetts, New York, New Jersey and North Carolina planning to participate in the program.

Interstate Tagging Program - The Interstate Tagging Program is a state-federal program for the coordination of scientific and angler-based tagging programs. NMFS and USFWS personnel serve as members of the Interstate Tagging Committee. Wilson Laney (USFWS) is currently the Vice-Chair.

Stock Assessment Training Workshops - ASMFC will continue to sponsor technical and advanced level stock assessment training workshops in order to educate state fishery biologists in current stock assessment methods and to provide a forum for transfer of information between state and federal stock assessment biologists. NMFS stock assessment personnel will continue to be involved both as workshop participants and leaders.

Socioeconomics - ASMFC has focused much attention on integrating social and economic information into the ASMFC's decision-making process. NMFS and USFWS personnel will continue to serve as members of the Committee on Economics and Social Sciences (CESS) and as members of ASMFC's PDTs and PRTs. ACCSP also uses the CESS to develop its standards for socio-economic data collection and funded a major pilot survey of methodology for commercial fisheries from 1999 to 2001.

Power Plant Assessments - The ASMFC's Power Plant Panel is developing a demonstration model to evaluate the cumulative coastwide impingement and entrainment impacts of power plants on Atlantic menhaden populations. NMFS personnel (Doug Vaughan) serves on this panel.

Aquaculture - The ASMFC has a cooperative agreement with the NMFS' Northeast Region to develop a guidance document to assist states in addressing aquaculture issues within their jurisdictions. NMFS and USFWS personnel will continue to be involved in the development of this guidance document.

#### Proposed management planning activities for FY 2005

1. NMFS and USFWS staff will develop a strategic plan for activities in support of the ACA, including ACCSP activities.

2. ASMFC will notify USFWS of the importance of the USFWS' efforts in assisting the ASMFC, especially with anadromous fishery resources.
3. When ASMFC updates its annual work plan, it will recognize NMFS and USFWS' contribution to ASMFC stock assessment efforts.
4. NMFS, USFWS, and ASMFC will explore means to obtain EFH designations for species managed under authorities, other-than MSA, such as ACA.
5. NMFS and USFWS will continue to encourage NMFS' Science Centers, USGS- BRD, and ASMFC personnel to explore ways to improve and implement fisheries research programs to support ISFMP.
6. NMFS and USFWS will continue to review areas of NMFS and USFWS support to the ASMFC and make recommendations to the MOU Committee on how the two agencies can work more effectively and efficiently to support the ASMFC.
7. NMFS and USFWS will continue discussions on how best to support the ASMFC Habitat Program, including future identification of specific tasks in this MOU Work Plan.
8. NMFS and USFWS will continue to encourage protected resource staff to participate in MOU and appropriate ASMFC planning and development meetings.
9. NMFS and USFWS' law enforcement personnel will continue to actively participate in the meetings and coordination activities of the ASMFC Law Enforcement Committee
10. USFWS South Atlantic Fisheries Coordination Office will continue to provide staff support to the South Atlantic State/Federal Fisheries Management Board for programs including; bycatch reduction devices in shrimp trawls, and update ASMFC red drum, Atlantic croaker and spot FMPs.

ASMFC - Management Activities for FY 2005

The following summarizes the development and implementation of new ASMFC FMPs, amendments, or addenda to address conservation and management needs, as of 2/1/05.

<b>Species</b>	<b>Management Activity</b>
<b>American Eel</b>	<b>Development of peer review of stock assessment</b>
<b>American Lobster</b>	<b>Development of peer review of stock assessment</b>
<b>Atlantic Croaker</b>	<b>Complete and Implement Amendment 1</b>
<b>Atlantic Herring</b>	<b>Complete Amendment 2</b>
<b>American Shad and River Herring</b>	<b>Development of peer review of stock assessment</b>
<b>Atlantic Striped Bass</b>	<b>Develop Addendum I to establish bycatch data collection program</b>
<b>Bluefish</b>	<b>Development of peer review of stock assessment</b>
<b>Horseshoe Crab</b>	<b>Peer Review of Assessment Methodology</b>
<b>Scup</b>	<b>Development of Amendment 14 and Addendum XI and Development of peer review of stock assessment</b>
<b>Summer Flounder</b>	<b>Amendment 14, Development of peer review of stock assessment</b>
<b>Tautog</b>	<b>Development of peer review of stock assessment</b>
<b>Weakfish</b>	<b>Development of peer review of stock assessment</b>
<b>Winter Flounder</b>	<b>Development of Amendment 1</b>

The following summarizes the monitoring and implementation of existing ASMFC management programs (as of 2/1/05).

<b>Species</b>	<b>Management Activity</b>
<b>American Eel</b>	<b>Monitoring and implementation of existing FMP</b>
<b>Black Sea Bass</b>	<b>Monitoring and implementation of existing FMP</b>
<b>Atlantic Menhaden</b>	<b>Monitoring and implementation of existing FMP</b>
<b>Atlantic Sturgeon</b>	<b>Monitoring and implementation of existing FMP</b>
<b>Bluefish</b>	<b>Monitoring and implementation of existing FMP</b>
<b>Northern Shrimp</b>	<b>Monitoring and implementation of existing FMP</b>
<b>Red Drum</b>	<b>Monitoring and implementation of existing FMP</b>
<b>Shad and River Herring</b>	<b>Monitoring and implementation of existing FMP</b>
<b>Spanish Mackerel</b>	<b>Monitoring and implementation of existing FMP</b>
<b>Spiny Dogfish</b>	<b>Monitoring and implementation of existing FMP</b>
<b>Spot</b>	<b>Monitoring and implementation of existing FMP</b>
<b>Spotted Seatrout</b>	<b>Monitoring and implementation of existing FMP</b>
<b>Tautog</b>	<b>Monitoring and implementation of existing FMP</b>
<b>Weakfish</b>	<b>Monitoring and implementation of existing FMP</b>



## TABLES

**Table 1. Atlantic Coastal Fisheries Cooperative Management Act. Apportionment and Distributions for FY 2000 - 2005. (\$1,000)**

YEAR	2000	2001	2002	2003	2004	2005
Distribution to NE Regional Office						
ASMFC						
General	1,584.00	1,912.00	1,912.00	1,942.00	1,909.37	3,885.46*
ACCSP	593.00	1,082.20	1,178.68	1,302.77	1,289.03	1,421.07
Total For ASMFC	2,177.00	2,994.20	3,090.68	3,244.77	3,198.40	5,306.54
ME	178.40	201.61	199.96	196.41	188.38	194.28
NH	145.80	155.30	151.70	148.37	141.63	144.67
MA	217.57	233.99	236.43	228.53	218.89	225.38
RI	177.88	188.69	189.25	180.86	172.76	176.28
CT	168.84	183.11	183.27	174.14	165.12	168.83
NY	199.49	212.65	212.05	200.92	189.56	191.78
NJ	219.08	233.82	234.05	224.07	214.64	219.44
PA	117.57	120.73	116.91	115.11	109.68	112.01
DE	170.35	183.92	188.43	176.12	168.07	171.76
MD	88.44	208.49	213.49	195.79	186.55	189.70
VA	203.00	215.46	216.54	206.52	197.57	201.97
PRFC	96.63	103.00	103.00	103.00	101.27	101.52
DC	37.27	40.00	40.00	40.00	39.33	39.43
TOTAL NE STATES	2,120.32	2,280.77	2,285.08	2,189.84	2,093.45	2,137.05
Distribution to SE Regional Office						
NC	203.00	225.35	229.36	215.66	205.39	210.08
SC	158.28	171.53	171.06	162.37	154.52	156.88
GA	149.24	164.97	164.41	156.21	148.66	151.24
FL	216.16	237.39	230.09	217.40	205.09	207.85
TOTAL SE STATES	726.68	799.24	794.92	751.64	713.66	726.05
Distribution to NOAA Fish. HQ						
Offices						
SF8	119.80	52.00	20.00	20.00	39.58	18.28
F/ST	25.00	22.00	26.00	26.00	25.73	25.63
F/HC	20.00	13.00	13.00	13.00	13.00	12.81
F/PR	10.00	8.00	8.00	8.00	7.92	7.89
F/NER	155.00	200.00	220.00	220.00	110.62	166.01
F/SER	106.00	106.00	119.00	119.00	117.74	118.28
CHESAPEAKE BAY PROG.	4.00	4.00	4.00	4.00	3.69	3.94
F/EN	0	0	30.00	0	0	0
F/ST to ACCSP	0	152.50	21.32	0	0	0
F/SF8 to ACCSP	777.28	0	0	0	0	0
F/NE to ACCSP	0	388.50	300.00	197.23	195.15	57.41
TOTAL FOR NMFS	1,217.08	946.00	761.32	607.23	513.29	410.25
Distribution to USFWS						
USFWS	50.00	75.00	100.00	100.00	98.95	100.00
USFWS to ACCSP	6.72	0	0	0	0	0
TOTAL FOR USFWS	56.72	75.00	100.00	100.00	98.95	100.00
TOTAL FUNDS AVAILABLE	6,297.80	7,095.21	7,032.00	6,893.48	6,617.75	8,679.89
Funds Spent on Winter Cruise					30.00	0
NOAA/NMFS Assessments				33.89	414.36	132.68
Permanent Transfer to NERO					108.20	108.20
NERO SERO Admin Support					77.34	329.25
GRAND TOTALS	6,567.80	7,412.21	7,341.00	7,250.00	7,250.00	9,250.00

\* Includes \$1,971.3 added by Congress to address special management concerns.

**Table 2. NMFS Participation on the Atlantic States Marine Fisheries Commission Groups.**

<i>ISFMP Policy Board</i>	J. Dunnigan, A. Lange, Proxy		
<i>Fishery Mgt. Board</i>	<i>Board Members</i>	<i>Technical Committee Members</i>	<i>Stock Assessment Members</i>
Striped Bass	A. Lange	G. Shepherd	G. Shepherd
Weakfish	A. Lange	D. Vaughan	D. Vaughan
Shad & River Herring	S. Meyers	R. Haas-Castro	
American Lobster	H. Mears	J. Idoine	J. Idoine, L. Jacobsen
Summer Flounder	H. Mears	M. Terceiro	M. Terceiro
Tautog	H. Mears	F. Steimle	
Winter Flounder	H. Mears	M. Terceiro, P. Nitschke	M. Terceiro, P. Nitschke
Bluefish	H. Mears	G. Shepherd, M. Raizin, K. Brennan	
Scup & Black Sea Bass	H. Mears	M. Terceiro, R. Dixon, K. Shertzer	M. Terceiro
Atlantic Menhaden	S. Meyers	D. Vaughan, J. Smith	D. Vaughan
Atlantic Sturgeon	T. Meyer	M. Nammack, J. Merriner	
American Eel	T. Meyer	R. Maney	
Horseshoe Crab	T. Meyer	R. Maney, A. Draxler, D. Orner	
Spiny Dogfish & Coastal Sharks	H. Mears, Dogfish C. Rogers, Coastal Sharks	Coastal Sharks proxy- K. Brewster-Geisz; Dogfish- P. Rago	
Northern Shrimp		J. Idoine	J. Idoine
Atlantic Herring		W. Overholtz	W. Overholtz
<i>South Atlantic Board</i>	B. Sutter		

Red Drum	B. Sutter	D. Vaughan	D. Vaughan
Spotted Seatrout	B. Sutter	J. Merriner	
Spot	B. Sutter	J. Merriner	
Croaker	B. Sutter	E. Williams	E. Williams
Spanish Mackerel	B. Sutter	J. Merriner	
<i>Plan Development</i>	<i>Review Team</i>	<i>Development Team</i>	
Striped Bass	G. Shepherd	G. Shepherd, P. Fricke	
Tautog	F. Steimle		
Atlantic Herring	W. Overholtz	W. Overholtz, D. Gouvier	
Atlantic Sturgeon	T. Meyer		
Horseshoe Crab	T. Meyer		
Shad & River Herring	S. Meyers		
Summer Flounder	M. Terceiro		
Atlantic Menhaden	D. Vaughan		
Red Drum	D. Vaughan		
<i>Process Committees</i>	<i>Members</i>		
Stock Assessment	F. Serchuk, D. Vaughn		
Habitat	T. Bigford		
Artificial Reefs	F. Steimle		
Conservation Engineer	J. Kenny		
Law Enforcement	D. Jones		
Interstate Tagging	F. Almeida		
Protected Species	T. Conant, G. Waring		
Shellfish Transport	G. Wikfors, W. Blogoslowski		
<i>Research &amp; Statistics Coordination</i>	<i>Members</i>		

Management & Science	H. Mears, S. Meyers, N. Thompson		
SEAMAP	J. Merriner		
NEAMAP	F. Almeida, J. Galbraith		
ACCSP Coordinating Council	S. Murawski P. Kurkul, N. Thompson, J. Dunnigan	Proxies: D. Van Voorhees; J. Witzig; A. Chester; A. Lange	
ACCSP Biological Review Panel	J. Bennett, S. Link, M. Prager, T. Sminkey, S. Wigley		
ACCSP Bycatch Prioritization Committee	T. Conant, D. Hansford, J. Poffenberger, K. Wang, S. Wigley		
ACCSP Commercial Technical Committee	J. Poffenberger, S. Koplín, P. Scida, E. Steady, D. Wieting, J.Desfosse		
ACCSP Information Technology Committee	J. Palmer, R. Reidman		
ACCSP Statistical Operations	D. Van Voorhees, G. Power, J. Poffenberger, B. Sutter		
ACCSP Recreational Technical Committee	D. Van Voorhees, T. Sminkey, R. Dixon, S. Steinback, S. Holiman,		
ACCSP Registration Tracking	J. Poffenberger		
Economics/Social Science	P. Fricke, P. Logan, S. Holiman		

**Table 3. USFWS Fisheries Participation on the Atlantic States Marine Fisheries Commission Groups. Proxies are in parentheses.**

<i>ISFMP Policy Board</i>	J. Geiger, (Vice W. Cole)		
<i>Fishery Mgt. Board</i>	<i>Board Members</i>	<i>Technical Committee Members</i>	<i>Stock Assessment Members</i>
Striped Bass	J. Geiger, (Vice W. Cole)	C. Tipton, W. Laney	
Weakfish	J. Geiger, (Vice W. Cole)	C. Tipton, W. Laney	
Shad & River Herring	J. Geiger, (Vice W. Cole)	R. St. Pierre, M. Odum, W. Laney	
American Lobster			
Summer Flounder	J. Geiger, (Vice W. Cole)	W. Laney	
Tautog	J. Geiger, (Vice W. Cole)		
Winter Flounder	J. Geiger, (Vice W. Cole)		
Bluefish	Vice W. Cole	W. Laney	
Scup & Black Seabass	J. Geiger, (Vice W. Cole)		
Atlantic Menhaden	J. Geiger, (Vice W. Cole)	C. Tipton	
Atlantic Sturgeon	J. Geiger, (Vice W. Cole)	V. Mudrak, W. Laney, J. Mohler, M. Millard, J. Brown	V. Mudrak
American Eel	J. Geiger, (Vice W. Cole)	W. Laney, A. Hoar, S. Minkkinen	
Horseshoe Crab	J. Geiger, (Vice W. Cole)	G. Breese, M. Millard, J. Brown	M. Millard
Spiny Dogfish & Coastal Sharks	Vice W. Cole, (J. Geiger)	W. Laney	
Northern Shrimp			
Atlantic Herring			
<i>South Atlantic Board</i>	Vice W. Cole, (W. Laney)		
Red Drum	Vice W. Cole, (W. Laney)	W. Laney	
Spotted Seatrout	Vice W. Cole, (W. Laney)	W. Laney	

Spot	Vice W. Cole, (W. Laney)	B. Williams	
Croaker	Vice W. Cole, (W. Laney)	W. Laney	
Spanish Mackerel	Vice W. Cole, (W. Laney)		
<i>Plan Development</i>			
Striped Bass	W. Laney		
Tautog			
Atlantic Herring			
Atlantic Sturgeon	R. St. Pierre		
Horseshoe Crab			
Shad & River Herring	R. St. Pierre		
Summer Flounder	W. Laney		
Weakfish	W. Laney		
Bluefish	W. Laney		
American Eel	W. Laney		
<i>Process Committees</i>			
Stock Assessment Committee	Vice W. Cole		
Habitat Committee	W. Laney, J. Brown		
Artificial Reefs	J. Gill		
Marine Recreational Fishing	Vice W. Cole, R. Essig		
Shellfish Transport			
Conservation Engineering	R. Quinn		
Law Enforcement	T. Healy		
Interstate Tagging	W. Laney		
Artificial Reef			
Conservation	R. Quinn		

Engineering Advisors			
Protected Species			
<i>Culture &amp; Stocking</i>	<i>Members</i>		
Atlantic Sturgeon	R. St. Pierre		
Striped Bass	W. Laney		
<b><i>Tagging Committee</i></b>	<b><i>Members</i></b>		
Atlantic Sturgeon	W. Laney, A. Spells		
Striped Bass	W. Laney, C. Tipton		
<i>Research &amp; Statistics Coordination</i>			
Management & Science	Vice W. Cole, J. Brown	Vice W. Cole, (W. Laney)	
SEAMAP	W. Laney		
NEAMAP			
ACCSP Coordinating Council	J. Geiger, Vice W. Cole		
ACCSP Biological Review Panel	J. Brown, D. Forsell		
ACCSP Bycatch Prioritization Committee	D. Forsell		
ACCSP Commercial Technical Committee	no commercial component		
ACCSP Information Technology Committee	D. Perkins		
ACCSP-Operations Committee	Vice W. Cole		
ACCSP Recreational Technical Committee	R. Essig, R. Gasaway		
Economics & Social Science			

**Table 4. EEZ Regulations under the ASBCA and ACA. \***

ACT SPECIES	REASON FOR ACTION	ANPR	EA/EIS	Proposed Rule	FINAL RULE
ASBCA Atlantic Striped Bass 10/90	Regulations were developed in response to ASBCA, which requires Secretary of Commerce, after certain consultations, to issue regulations on fishing for striped bass in the Atlantic EEZ.	8/16/89 (54 FR 33735)	None	6/22/90 (55 FR 25677)	10/2/90 (55 FR 40181) – Prohibits the harvest and possession of Atlantic striped bass in EEZ. Transporting striped bass through Block Island Sound was allowed. Regulatory changes to Part 656.
ASBCA Atlantic Striped Bass 12/96	4/11/95 – a letter from ASMFC Atlantic Striped Bass Management Board stated that ending the federal moratorium would not jeopardize the health of the migratory stock, and EEZ landings could be carefully controlled, as long as state regulations at the port of landing were applied to any catch from federal waters. 6/26/95 received letter from ASMFC stating that the Board letter was the official statement of the ASMFC.	None	EA 8/95	9/27/95 (60 FR 49821)	12/5/96 (61 FR 64497) - Secretary withdrew proposed rule because of current uncertainty about the interim fishing mortality rate target (F = 0.33) being achieved, ASMFC's action to postpone going to a full (F = 0.40) fishery until 1/1/98, the ongoing work to identify and correct some potential enforcement loopholes, the ASMFC's decision to prepare an addendum to Amendment 5 to address the 1997 fishery, and the addition of three new national standards to the MSA not considered at the time of proposed rulemaking. In addition, there was a coordinated effort by recreational fishermen through their fishing associations to oppose the opening. No regulatory change.
ACA Weakfish 11/95	The ASMFC Weakfish Management Board voted in 12/95 to request that NMFS proceed with regulations in the EEZ to support Amendment 2 to the Weakfish FMP.	None	FEIS 9/29/95	6/20/95 (60 FR 32130)	11/27/95 (60 FR 58246) – Closed the EEZ to weakfish fishing in support of Amendment 2, effective date 12/21/95. This resulted in a suit (see history of litigation Table 6 for more details). On 7/3/96 (61 FR 34746), the final rule was suspended. No regulatory change.
ACA American lobster 3/97	Congress through the Sustainable Fisheries Act (SFA) amended the ACA to allow fishing for lobster by vessels issued Maine State American lobster permits in designated areas of the EEZ. These small areas of the EEZ lie between two	None	None	None	3/5/97 (62 FR 9993) - Effective Date 2/28/97 We referred to this technical amendment as Maine Pocket Waters Amendment.” Change to prohibitions at part 649.8, and added Section 649.24 to designate areas of the EEZ in which State-permitted vessels may harvest American lobster.

	areas of State waters created by islands near the coast of Maine. The SFA provides that any person holding a valid permit issued by the State of Maine may engage in lobster fishing in these pocket waters, if such fishing is in accordance with all other applicable Federal and State regulations.				
ACA Weakfish 9/97	After the suspension of the weakfish final rule in July 1996, NMFS worked with ASMFC and the State of North Carolina to develop Amendment 3 to the Weakfish FMP. Amendment 3, adopted in May 1996, included the following specific recommendations to Secretary: (1) Minimum size of 12 inches, (2) weakfish harvested in the EEZ be landed in accordance with the landing laws of the state in which they are landed with the exception that weakfish caught in the EEZ may not be landed in <i>de minimis</i> states, (3) minimum mesh sizes in the EEZ be consistent with a 12-inch minimum fish size, (4) Non-directed fisheries using smaller mesh sizes may possess no more than 150 lb of weakfish during any one day or trip, whichever is longer, and (5) the use of flynets in the EEZ south of Cape Hatteras be consistent with adjacent state regulations.	None	FSEIS 7/3/97 (62 FR 36062)	2/14/97 (62 FR 6935)	9/22/97 (62 FR 49451) – Imposed a minimum size limit of 12 inches; minimum mesh sizes in the EEZ of 3 ¼-inch square stretch mesh or 3 ¾-inch diamond stretch mesh for trawls, and 2 7/8- inch stretch mesh for gill nets; a bycatch possession limit of 150 lb for fisheries using smaller mesh sizes for any one day or trip, whichever is longer; a prohibition on the use of flynets in a closed area of the EEZ off North Carolina, south of Cape Hatteras from 3 nm to about 40 nm offshore; a prohibition on the possession of any weakfish in the closed area of the EEZ off North Carolina when using shrimp trawls or crab trawls; and a requirement that weakfish harvested for commercial purposes in the EEZ be landed only in the following states: MA, RI, CN, NY, NJ, DE, MD, VA, or NC. In addition, weakfish fishing must be in accordance with the laws of the state where weakfish are landed if the state’s regulations are more restrictive than the Federal regulations. Regulatory change to prohibitions at Part 697.7(a).
ACA American lobster 3/98	Congress, through Section 404(c) of the SFA, amended the ACA by adding Section 810. The change required that, if no regulations have been issued under section 804(b) of ACA by December 31, 1997, to implement a coastal FMP for American lobster, the Secretary shall issue interim regulations before March 1, 1998, that will prohibit any vessel that takes lobsters in the EEZ by a method other than	None	EA 1/23/98	None	3/2/98 (63 FR 10154) – Interim final rule effective date 3/1/98. This rule was referred to as the Snowe Amendment. Regulations implemented were as stated under REASON FOR ACTION. Regulatory change to prohibitions at part 697.6.

	<p>pots or traps from landing lobsters (or any parts thereof) at any location within the U.S. in excess of 100 lobsters (or parts thereof) for each fishing trip of 24-hours, or less duration, 500 lobsters (or parts thereof) during any 5-day period, or 500 lobsters (or parts thereof) for a trip of 5 days or longer.</p> <p>Regulations under this section remain in effect until the Secretary implements regulations under section 804(b) of ACA to implement a coastal FMP for American lobster.</p>				
ACA Atlantic Sturgeon 2/99	<p>Amendment 1 to the Atlantic sturgeon FMP requests that the Secretary of Commerce prohibit possession of Atlantic sturgeon in the EEZ since Atlantic sturgeon currently cannot be landed in any Atlantic coastal state. ASMFC projected the moratorium to last 41 years.</p>	None	EA 9/98	Not required under a Direct Final Rule.	<p>2/26/99 (64 FR 9449) – Direct Final Rule. Rule prohibits the possession in or harvest from the EEZ of Atlantic sturgeon from Maine through Florida.</p> <p>4/19/99 (64 FR 19069) – Direct final rule; notification of effective date of 5/27/99. Regulatory change to prohibitions at part 697.7.</p>
ACA American Lobster 9/99	<p>To establish a control date and qualifying period under Addendum 1 (approved 8/1/99) to Amendment 3 of the American Lobster FMP, ASMFC recommended a qualifying period from 3/25/91 through 11/1/97 for LCMA’s 3, 4, and 5.</p> <p>Note: the control date was implemented under the American Lobster 3/03 process below.</p>	9/1/99 (64 FR 47756)	See 3/03 below.	See 3/03 below.	<p>In response to Addendum 1, NMFS established 9/1/99 instead of 11/1/97 as the ending date (control date) because of NMFS’ policy to provide advance notice to the public of qualification dates. Therefore, the qualifying period would be 3/25/91 through 9/1/99. This control date for the American lobster fishery limits future access to the lobster fishery based on historical participation and/or historical trap levels in the seven lobster management areas identified in Amendment 3 to ASMFC’s American Lobster FMP (approved 12/97). No regulatory change at ANPR stage</p>
ACA American Lobster 12/99	<p>ASMFC’s Amendment 3 to the Interstate FMP for American Lobster recommended that the Secretary take the following actions:</p> <p>(1) Implement the provisions of sections 3.1 (Coastwide Requirements and Prohibited Actions), and 3.2 (Measures Applicable To All States and Areas Along The Atlantic Coast) in all waters of the EEZ throughout the</p>		NOI 10/22/97 (62 FR 54834)	1/15/99 (64 FR 2708)	<p>12/6/99 (64 FR 68228) –Regulations covered Maine-North Carolina and are summarized here. The regulations remove management measures issued under MSA and replace them with the same and a number of new management measures under ACA. New measures include designation of lobster management areas, restrictions on fishing gear, and tagging requirements for lobster traps. In addition, these regulations establish</p>

	<p>range of the species;</p> <p>(2) Implement the provisions of section 3.3 (Measures Applicable to Commercial Fishing in Lobster Management Areas) applicable to the respective areas in all waters of the EEZ contained in each respective areas (see Appendix I);</p> <p>(3) Continue current monitoring and reporting programs as regards to collection of data pertinent to the lobster fishery; and</p> <p>(4) Initiate discussions with the Canadian government concerning coordination of future gauge size changes.</p> <p>The ASMFC recognized that the above actions may be taken under the ACA or the MSA. The specific recommendations were too extensive to adequately cover here. See Amendment 3 for more details.</p>		<p>(63 FR 6180)</p> <p>With drawn DEIS1 2/20/98 (63 FR 8634)</p> <p>NOA DEIS2 3/27/98 (63 FR 14922)</p> <p>NOA FEIS 5/28/99 (64 FR 29025)</p>	<p>(64 FR 6596)</p>	<p>an annual regulatory adjustment process for implementation of additional measures in consultation with ASMFC. Regulatory change removed part 649 and placed under part 697, and changes were also made to parts 697.4, 697.5, 697.6, 697.7(b), 697.8, 697.12, and 697.17-.25.</p> <p>DEIS1 was presented to the ASMFC's American Lobster Fishery Management Board. Based on the Board's concerns with the arrangement of the document, NMFS withdrew the DEIS1, reorganized the document, and republished it as DEIS2.</p> <p>This rule resulted in three consolidated lawsuits and one separate lawsuit (see History of Litigation Table 6, below for more details).</p>
<p>ACA Horseshoe Crab (HSC) 2/01</p>	<p>Addendum I to the HSC FMP (April 2000), included recommendations for NMFS to close the harvest of HSCs in Federal waters within a 30-nm radius of the mouth of Delaware Bay. The taking of HSCs for any purpose, including biomedical, would be prohibited in this area closure. Furthermore, the NMFS should prohibit the transfer of HSCs at sea in federal waters.</p> <p>Biomedical collection was approved in 2004.</p>	<p>5/3/00 (65 FR 25698)</p>	<p>EA 12/00</p>	<p>10/16/00 (65 FR 61135)</p>	<p>2/5/01 (66 FR 8906) – Established the Carl N. Schuster Horseshoe Crab Reserve (30-nm radius seaward from the midpoint of the territorial sea line at the mouth of Delaware Bay), and prohibited fishing and limited possession (no possession on vessel with trawl or dredge) of horseshoe crabs. The transfer of HSC at sea was later determined by ASMFC and NMFS to not be a problem. Changes to prohibitions at 697.7(e), and section 697.22 and 697.23.</p>
<p>ACA Black Sea Bass/American</p>	<p>To clarify that lobster trap regulations do not affect trap gear requirements for fishermen who do not possess a Federal limited access American lobster permit. The intent of these regulations is to relieve unintended restrictions on fishers, without</p>	<p>None</p>	<p>EA 2/00</p>	<p>12/5/00 (65 FR 75916)</p>	<p>3/13/01 (65 FR 14500) – Black Sea Bass/Lobster Area 5 Waiver. This action exempts black sea bass fishers who concurrently hold limited access lobster and limited access black sea bass permits from the more restrictive gear requirements in the lobster regulations when</p>

Lobster 3/01	compromising lobster conservation goals.				fishing in LCMA 5 if they obtain a “Area 5 Trap Waiver” category permit. Under this exemption, such fishers are restricted to the non-trap lobster allowance while targeting black sea bass in LCMA 5. Changes to parts 697.4, 697.7, 697.19, 697.21, and 697.26.
ACA American Lobster 3/03	To respond to recommendations made in Addendum 1 to Amendment 3 to the ASMFC American Lobster FMP: To control fishing effort as determined by historical participation in the American lobster trap fisheries conducted in the offshore LCMA 3 and in nearshore LCMAs of the EEZ from New York through North Carolina (Areas 4 & 5); to implement a mechanism for conservation equivalency and associated trap limits for owners of vessels in possession of a Federal lobster permit (permit holder) fishing in New Hampshire state waters; and to clarify lobster management area boundaries in Massachusetts waters.	5/24/01 (66 FR 28726)	NOI 12/10/99 (64 FR 69227)  NOA DSEIS 11/24/00 (65 FR 70567)  NOA FSEIS 11/8/02 (67 FR 68128)	1/3/02 (67 FR 282)  Extended Comment Period 1/31/02 (67 FR 4697)	3/27/03 (68 FR 14902) – This regulation addresses all of the recommendations listed under REASON FOR ACTION and is compatible with Addendum 1. See note #1 below for more details on the regulation.  Regulatory changes to parts 697.4, 697.18, 697.19, and 697.25.  The proposed and final rules included the control and qualifying dates proposed in the ANPR published on 9/1/99 (64 FR 47756) above.
ACA American Lobster	<i>To respond to broodstock protection measures recommendations made in Addendum II to Amendment 3 to ASMFC American Lobster FMP (approved 2/1/01): to revise the egg production schedule in each of the seven LCMAs to end overfishing of American lobster stocks by the end of 2008, and implement the associated management measures (gauge increases, modifications to lobster trap gear requirements and LCMA 3 trap reduction schedule, and vessel log reporting requirement.</i>  <i>Also, responds to recommendations made in Addendum III to Amendment 3 to ASMFC American Lobster FMP (approved 2/02): to implement dates for</i>	<i>ANPR 5/24/01 (66 FR 28726)</i>  <i>ANPR 9/5/02 (67 FR</i>	<i>NOI for Add. II 9/24/01 (66 FR 48853)</i>  <i>NOI with drawn 5/10/05 (70 FR 24495)</i> <i>EA will be</i>	<i>Ongoing</i>	<i>NMFS proposes to combine measures related to Addendum II and III to Amendment 3 into one rulemaking. Addenda II and III are both designed to address overfishing of lobster by increasing egg production, and as such, lend themselves to a single rulemaking.</i>

	<i>the minimum gauge size increases initially approved in Addendum II, including additional management measures for LCMAs 2,3,4,5 and the Outer Cape Area, and adopt management programs for LCMAs 1 and 6, neither of which submitted LCMT plans for Board approval under Addendum III.</i>	56801)	<i>develop.</i>  <i>NOI to combine Add. II/III</i> 9/5/02 (67 FR 56800)		
ACA Weakfish 10/03	To respond to Amendment IV to ASMFC Weakfish FMP (approved 11/02), which included a recommendation to the Secretary, forwarded to NMFS on 3/13/03. ASMFC recommended that the Secretary: (1) implement Federal regulations to require weakfish that are recreational harvested in the EEZ comply with the laws in the state that they are landed; and (2) in the non-directed fisheries using smaller sized mesh a possession limit of no more than 300 lb of weakfish during any one day or trip, whichever is longer in duration (an increase of 150 lb as required in Amendment III). ASMFC recommended this change to address an increase in weakfish biomass, which resulted in greater weakfish discards.	None	EA 9/22/03	7/1/03 (68 FR 39048)	10/2/03 (68 FR 56789) – The rule allows vessels in non-directed fisheries, using mesh sizes less than 3 ¼-inch square stretch mesh or 3 ¾-inch diamond stretch mesh for trawls and 2 7/8-inch stretch mesh for gillnets to possess no more than 300 lb of weakfish caught in the EEZ during any one day or trip, whichever is longer in duration (an increased of 150 lb); removes Connecticut from the list of states where commercially caught weakfish from the EEZ could be landed; and adds NMFS’ Director, Office of Sustainable Fisheries as an official who can grant exempted fishing permits (to correct a previous oversight). Regulatory changes to prohibitions at parts 697.7 and 697.22.
ASBCA Atlantic Striped Bass	<i>To respond to recommendations made in Amendment 6 to ASMFC’s Atlantic Striped Bass FMP, and forwarded to the Secretary on 4/24/03. The recommendations were for implementation of the following regulations in the EEZ; (1) Remove the moratorium on the harvest of Atlantic striped bass in the EEZ; (2) implement a 28-inch minimum size limit for recreational and commercial Atlantic striped bass fisheries in the EEZ; and (3) allow states the ability to adopt more restrictive rules for fishermen and vessels licensed in their jurisdictions.</i>	7/21/03 (68 FR 43074)	<i>NOI</i> 10/20/03 (68 FR 59906)  <u>Ongoing</u>		<i>NMFS has delayed rulemaking on this recommendation pending completion of the 2005 striped bass stock assessment. The DEIS was near completion in 11/05 when the 2004 stock assessment results indicated overfishing may be occurring, contrary to analyses reported in the DEIS. However, stock assessment scientists are not confident in those results. The DEIS will be completed and released once the new assessment is completed.</i>

<i>ACA Red Drum</i>	<i>To respond to a 10/26/04 request from the South Atlantic Fishery Management Council, and a recommendation from ASMFC contained In Amendment 2 to ASMFC's Red Drum FMP and in a 12/17/04 letter to the Secretary, to transfer management authority for red drum from MSA to ACA, and to continue the moratorium in the EEZ to the harvest and possession of red drum.</i>		<i>EA ongoing</i>		<i>NMFS is currently in rulemaking on this requested action. An EA is being drafted citing the following reasons for the transfer: (1) the EEZ has been closed to harvest of red drum since 1990 and 100% of the harvest and almost all of the day-to-day management of red drum has taken place in state waters under state and ASMFC jurisdiction; (2) ASMFC has a red drum FMP that mirrors the Council's Red Drum FMP; (3) the transfer of management authority will minimize costs and avoid unnecessary duplication as mandated by National Standard 7 without having any adverse impacts on the red drum resource; and (4) managing red drum via a single FMP under the ACA allows red drum to be managed throughout its range and provides for a more efficient and timely mechanism to address future problems as they arise.</i>
<i>ACA American Lobster</i>	<i>To respond to effort control recommendations made in Addendum II – VI to Amendment 3 to ASMFC American Lobster FM to implement: trap reductions in Areas 3-5 and the Outer Cape Area, the "choose and use" Area 3 provision, changes to the most restrictive rule, an effort control plan for Area 2, and a total trap cap and conservation tax for each transfer of traps.</i>	<i>ANPR 5/10/05 (70 FR 24495)</i>	<i>NOI (Effort Control) 5/10/05 (70 FR 24495)</i>		<i>NMFS is currently in rulemaking awaiting comments on published ANPR and in the process of developing an EIS to implement effort control measures listed under reason for action.</i>

\*=italicized entries indicate regulatory actions that are not yet finalized.

KEY: ACA = Atlantic Coastal Fisheries Cooperative Management Act  
ASBCA = Atlantic Striped Bass Conservation Act

ASMFC = Atlantic States Marine Fisheries Commission  
DEIS = Draft Environmental Impact Statement  
DSEIS = Draft Supplemental Environmental Impact Statement  
EA = Environmental Assessment  
EEZ = exclusive economic zone (3-200 nm offshore)  
EIS = Environmental Impact Statement  
FEIS = Final Environmental Impact Statement  
FR = Federal Register  
FSEIS = Final Supplemental Environmental Impact Statement  
LCMA = Lobster Conservation Management Areas  
MSA = Magnuson-Stevens Fishery and Management Act  
NOA = Notice of Availability of an EIS  
NOI = Notice of Intent to do an EIS

Note:

1. The regulations will control fishing effort based on historical participation in three Lobster Management Areas (LCMAs) including LCMA 3, the offshore waters of the Exclusive Economic Zone (EEZ), and LCMAs 4 and 5, the nearshore EEZ from New York to North Carolina. Lobsters harvested from LCMAs 3, 4, and 5 accounted for approximately 26% (21.6 million pounds) of total U.S. landings of American lobster in 2000. This management action also establishes “conservation equivalent” lobster trap limits in New Hampshire (NH) waters. This will allow approximately 40 full time NH commercial lobstermen, who also hold a Federal permit, to fish additional traps in NH state waters under the NH two-tier trap allocation program, while restricting approximately 250 part-time NH lobstermen to less traps than would normally be authorized in the LCMA. Other measures in this rule: clarify lobster management area boundaries in Massachusetts waters; clarify requirements that Federal lobster permit holders must attach federally approved lobster trap tags to all lobster traps fished in any portion of any lobster management area (whether in state or Federal waters); and clarifies procedures for NMFS to consider future ASMFC requests to implement conservation equivalent measures. The intent is to make the regulations easier to understand.

**Table 5a. Noncompliances' Processed by NMFS under the ASBCA and ACA.**

ACT	ASMFC Determination of Noncompliance		NMFS Determination of Noncompliance		NEPA	ASMFC Determination of Compliance	NMFS Determination of Compliance	Misc. Issues
	Date	State, Species, Reason	Yes No	Date of Moratorium				
ASBCA <sup>1</sup>	1/7/87	NJ-Striped Bass-NJ has a 24-inch minimum size limit while Amendment #3 requires a 31-inch restriction on 3/1/87, and a 33-inch restriction on 8/1/87, and because NJ had no other management measures to compensate for this difference and no data to demonstrate that a 24-inch restriction will meet the objective of Amendment #3.	Yes	Notice of receipt of ASMFC's determination: 52 FR 1518 1/14/87  DM 2/6/87  Notice of determination of noncompliance: 52 FR 4516 2/12/87  Effective date: 4/1/87	None	3/24/87	Compliance by NJ with FMP. 52 FR 10784 4/3/87	1/12/87 met with NJ. NJ agreed with ASMFC's finding of noncompliance and provided copies of a bill pending before the State Legislature, which would bring NJ back into compliance.
ASBCA	1/7/87	DC-Striped Bass-failed to implement and enforce any recreational fishing regulations, as required under Objective 1 of Amendment 3 to the Plan.	Yes	Notice of receipt of ASMFC's determination: 52 FR 1518 1/14/87  DM 2/6/87  Notice of determination of noncompliance:	None	3/27/04	Compliance by NJ with FMP. 52 FR 10783 4/3/87	1/9/87 met with DC. DC provided copies of proposed regulations to control striped bass fishing within the District, and described its efforts to develop enforcement authority. DC has been subject to the Act only since 10/86. Commercial fishing was prohibited. The recreational regulations that returned DC to compliance are similar to those for the PRFC.

				52 FR 4515 2/12/87  Effective date: 4/1/87				
ASBCA	9/12/88 will be out as of 10/1/88  9/28/88 is out as of 10/1/88	NJ-Striped Bass-NJ minimum size reverted to 18 inches on 10/1/88 from the required 33 inches. Legislative change required in state.	Yes	DM 9/28/88  Notice of determination that NJ was not in compliance with FMP and notice of imposition of a moratorium was drafted on 10/1/88 documents were held up until ASBCA was reauthorized, which did not occur until 11/3/88.  Effective date: upon publication	None	10/10/88	10/10/88	9/12/88 received heads-up letter that NJ will be out of compliance on 10/1/88. Pressure was exerted by DOC/DOI, ASMFC, and White House (election year environmental issue). We acted as if the 9/12/88 letter started the process, even though they were not out of compliance until 10/1/88. 9/20/88 met with NJ. NJ believed that if the Secretaries agreed with ASMFC on noncompliance that they would need 30 days to complete process. Not true, a moratorium could be put in place immediately after the determination. News releases by NMFS/FWS/NJ on/about 10/1/88 requesting NJ fishermen voluntarily release fish <33 inches until State Legislature extended statute. 10/10/88 in compliance. NJ estimated that during the 10 day (noncompliant period) that 225-430 fish <33 inches were harvested. ASBCA was reauthorized on 11/3/88. 10/1 thru 11/3/88 there was no Act.
ASBCA	1/5/90	NJ-Striped Bass-failed to implement and enforce 28-inch minimum size limit and a daily one fish bag	Yes	Notice of determination that NJ is not in compliance with FMP and notice	None	3/6/90	Termination of the Federal Moratorium 55 FR 9451 3/14/90	1/26/90 letter from NJ requested that the Secretaries delay declaration of a moratorium because the state will enact appropriate legislation by 2/28/90. Secretaries letter to NJ on 2/6/90 –

		limit by 1/1/90.		<p>of intent to declare a moratorium on fishing for striped bass. 55 FR 6302 2/22/90</p> <p>Declaration of Moratorium 55 FR 7900 03/06/90</p> <p>Final Rule Date Moratorium Declared: 3/1/90</p>				<p>declaration of moratorium would be delayed until 3/1/90, also (in 2/22/04 FR notice)--if you are not in compliance by 2/28/90, moratorium begins 3/1/90. Legislature did not enact legislation by 2/28/90. On 3/1/90, NJ Governor was notified that moratorium would begin on 3/1/90 – in (final rule 55 FR 7900 03/06/90), which added CFR part 656 (Atlantic Striped Bass Fishery). Legislature met and passed bill – in compliance 3/6/90. Part 656 was withdrawn, but brought back in 10/90 when EEZ was closed. This is the only time a moratorium was implemented, but not much happened during the 6 days.</p>
ACA <sup>2</sup>	11/4/94	NJ-Bluefish-failed to implement and enforce 10-fish bag limit for the recreational fishery by 9/1/94.	Yes	<p>DM 11/25/94</p> <p>Notice of determination of noncompliance; notice of moratoria 59 FR 63326 12/8/94</p> <p>Date Moratorium Declared: 12/5/94.</p> <p>Effective Date: 4/15/95 if not in compliance by</p>	None	3/15/95	<p>Notice of determination of compliance; cancellation of moratoria. 60 FR 19572 4/19/95</p>	<p>11/22/94 met with NJ. State admitted that they were out of compliance, but season has ended for this species. Signoff authority was still at DOC, paperwork submitted to delegate to AA, but did not occur until 6/4/96. Process went smoothly.</p>

				4/1/95.				
ACA	11/4/94	NJ-Weakfish-failed to enact regulations that would achieve the 25% reduction in exploitation in the commercial and recreational fisheries by 7/31/94.	Yes	DM 11/25/94  Notice of determination of noncompliance; notice of moratoria 59 FR 63326 12/8/94  Date Moratorium Declared: 12/5/94.  Effective Date: 4/15/94 if not in compliance by 4/1/94.	None	3/15/95	Notice of determination of compliance; cancellation of moratoria. 60 FR 19572 4/19/95	11/22/94 met with NJ. State admitted that they were out of compliance, but season has ended for this species. Signoff authority was still at DOC, paperwork submitted to delegate to AA, but did not occur until 6/4/96. Process went smoothly.
ACA	11/4/94	NJ-Atlantic Sturgeon-failed to implement and enforce any of the alternatives contained in the FMP by 9/20/94.	Yes	DM 11/25/94  Notice of determination of noncompliance; notice of moratoria 59 FR 63326 12/8/94  Date Moratorium Declared: 12/5/94.  Effective Date:	None	3/15/95	Notice of determination of compliance; cancellation of moratoria 60 FR 19572 4/19/95	11/22/94 met with NJ. State admitted that they were out of compliance, but season has ended for this species. Signoff authority was still at DOC, paperwork submitted to delegate to AA, but did not occur until 6/4/96. Process went smoothly.

				4/15/94 if not in compliance by 4/1/94.				
ACA	11/14/95	MD-Weakfish-failed to implement and enforce mesh size restrictions in gill net and finfish trawl nets in appropriate times and areas by 7/1/95, to achieve 75% escapement of state's minimum size weakfish.	Yes	DM 1/31/96  Notice of determination of noncompliance; notice of moratoria 61 FR 6351 02/20/96  Date Moratorium Declared: 1/31/96  Effective date: 4/15/96	None	3/5/96	Cancellation of Moratorium 61 FR 14744 4/3/96	Even though the fishing season for weakfish had ended and would not resume until the spring, the state returned to compliance immediately. DOC/NOAA signed off on 1/31/97.
ACA	6/24/97	MD-Scup-failed to implement and enforce a 9-inch minimum size for commercial fisheries and a 7-inch for recreational fisheries; a 4-1/2 inch minimum mesh size for commercial fisheries; a commercial quota; permitting and reporting requirements; a commercial summer closure; pot and trap limitations; and	Yes	DM 8/26/97  Notice of determination of noncompliance; notice of moratoria 62 FR 48060 9/12/97  Date Moratorium Declared: 9/11/97  Effective Date:	EA 7/31/97	10/20/97	Notice of determination of compliance; cancellation of moratorium 62 FR 60823 11/13/97	6/4/96 delegation of authority transferred to AA, but AA shall advise the Under Secretary, who shall then advise the Secretary before any final action is taken with respect to declaring a moratorium. State indicated by letter that it was out of compliance with FMP, but is taking actions to be in compliance. NOAA advised on 8/14/97; Secretary advised on 8/22/97. 10/7/97 State indicated that new regulations would be in effect on 10/20/97.

		prohibition on roller gear > 18 inches.		11/15/97 if not in compliance by 11/1/97 with final regulation.				
ACA	6/24/97	MD-Black Sea Bass-failed to implement and enforce a 9-inch minimum size for commercial fisheries; a 4-inch minimum mesh size for commercial fisheries; pot and trap restrictions; and restriction on roller gear > 18 inches.	Yes	DM 8/26/97  Notice of determination of noncompliance; notice of moratoria 62 FR 48060 9/12/97  Date Moratorium Declared: 9/11/97  Effective Date: 11/15/97 if not in compliance by 11/1/97 with final regulation.	EA 7/31/97	10/20/97	Notice of determination of compliance; cancellation of moratorium. 62 FR 60823 11/13/97	State indicated by letter that it was out of compliance with FMP, but is taking actions to be in compliance. NOAA advised on 8/14/97; Secretary advised on 8/22/97. 10/7/97 indicated that new regulations would be in effect on 10/20/97.
ACA	6/24/97	MA-Scup-failed to adopt permitting and reporting requirements, and restrictions on the use of pot and trap gear in Plan.	Yes	DM 8/26/97  Notice of determination of noncompliance; notice of moratoria 62 FR 48060 9/12/97  Date Moratorium	EA 7/31/97	10/3/97	Notice of determination of compliance; cancellation of moratorium. 62 FR 60823 11/13/97	State indicated by letter that it was out of compliance with FMP, but is taking actions to be in compliance. NOAA advised on 8/14/97; Secretary advised on 8/22/97. 10/8/97 State indicated that new regulations would be in effect on 10/3/97.

				Declared: 9/11/97				
				Effective Date: 11/15/97 if not in compliance by 11/1/97 with final regulation.				
ACA	6/24/97	MA-Black Sea Bass- failed to adopt pot and trap restrictions in FMP.	Yes	DM 8/26/97  Notice of determination of noncompliance; notice of moratoria 62 FR 48060 9/12/97  Date Moratorium Declared: 9/11/97  Effective Date: 11/15/97 if not in compliance by 11/1/97 with final regulation.	EA 7/31/97	10/3/97	Notice of determination of compliance; cancellation of moratorium. 62 FR 60823 11/13/97	State indicated by letter that it was out of compliance with FMP, but is taking actions to be in compliance. NOAA advised on 8/14/97; Secretary advised on 8/22/97. 10/8/97 State indicated that new regulations would be in effect on 10/3/97.
ACA	11/5/98 initially  5/4/99 re-start	MA-Scup-failed to implement and enforce the commercial quota limitations of the Joint Mid-Atlantic Fishery Management	Yes	6/10/99 – letter to Governor – State was determined to be out of compliance, but	None	N/A	N/A	11/19/98 NMFS notified ASMFC that their notification did not include the reasons for making the determination and an <u>explicit list of actions</u> (including the operation of the FMP's quota overage provision) that MA must take

		Council/ASMFC FMP.		moratorium could not be implemented because of Court's favorable ruling for MA on a scup lawsuit against DOC.				to implement and enforce its commercial quota limitations. We consider the notification incomplete and the 30-day clock did not started. 5/4/99 re-submitted, clock starts. 6/10/99 letter to ASMFC - until the joint ASMFC/Council FMP is amended to satisfy the court's ruling, the Secretary is not legally able to give further consideration to this matter. See details below under litigation number 1..
ACA	11/19/99	RI-Tautog-failed to implement and enforce bag limit for the recreational fishery in FMP.	Yes	DM 2/2//00  Notice of determination of noncompliance; notice of declaration of a moratorium. 65 FR 7508 2/15/00  Date Moratorium Declared: 2/15/00  Effective Date: 6/15/00 if not in compliance by 6/1/00	EA 1/3/00	4/28/00	Notice of determination of compliance; cancellation of moratorium 65 FR 34443 5/30/00	11/30/99 met with RI. RI was working on 5 possible alternatives that would bring them back into compliance by the start of the 2000 tautog season. DM was completed on 12/17/99, but Secretary did not sign the advisory memo until 2/2/00, which then allowed AA to signed DM.
ACA	6/9/00	VA-Horseshoe Crab (HSC)-failed to	Yes	DM 7/7/00	EA 9/23/00	10/20/00	Cancellation of Federal	Advisory letters signed 7/6 & 7/7/00. AA signed on 7/7. Met with state on

		implement and enforce a 152,495 HSCs commercial landing cap per Addendum I by 5/1/00; VA maintained a 710,000 HSC annual quota until 7/28/00, then by emergency rule, reduced the quota to 355,000 HSCs and required fishermen to use only ½ of a female HSC or two-halves of a male HSC in a bait bag if they use HSCs as bait.		<p>Declaration of a moratorium; interim final rule. This included codified text for Section 697. 65 FR 61116 10/16/00</p> <p>Effective Date: 10/23/00</p> <p>On 10/20/00 the Secretary Stayed the effective date of the moratorium and associated regulations through 10/27/00 to allow VA to come into compliance by 10/24/00, as they indicated they would. 65 FR 63550 10/24/00</p> <p>Effective Date: 10/23/00</p>			<p>moratorium; final rule. This included removal of Part 697's codified text language that implemented the moratorium. 65 FR 64896 10/31/00</p> <p>Effective Date: 10/27/00</p>	7/3/00, VA stated that its imposed quota of 710,000 horseshoe crabs is necessary to provide the only bait source for its whelk fishery, and because of lack of data on the status of the stocks. CZM consistency with VA's enforceable policies presented a major roadblock in implementing timely regulations (See CZM details below <sup>4</sup> . 10/18/00 ASMFC HSC Management Board agreed to VA's request to initiate the development of a revision to its HSC program that would allow voluntary transfer of quota among states under very restrictive limitations. This broke the impasse, and VA came back into compliance 10/20/00.
ACA	6/9/00	SC- American Shad- failed to implement and	Yes	DM 8/1/00	EA 8/1/00	11/6/00	Notice of determination	6/26/00 conference call with SC. Expect legislation to be signed by

		enforce the 10 fish recreational creel limit, per Amendment 1 to the FMP.		<p>Notice of determination of noncompliance; notice of declaration of a moratorium. 65 FR 49969 11/16/00</p> <p>Effective Date: 1/5/01 if not in compliance by 12/15/00.</p>			of compliance; cancellation of moratorium. 65 FR 77586 12/12/00	9/1/00, but Santee River is to remain at 20-fish, because data shows that American shad were not over fished in 1998 when it had no bag limit. Shad have already left SC waters and will return in February. As of 7/1/00, SC has a 20-fish American shad creel limit for the Santee River and a reduction in the number of days that the fishery can operate in the lower part of the river. SC does not have an American shad creel limit for any other waters. Advisory letters signed 7/6 & 7/7/00. AA signed DM 8/1/00. 10/2/00 ASMFC approved the 20-fish creel limit for Santee River as a conservation equivalency.
ACA	11/3/00	RI-American Lobster failed to implement and enforce a non-trap gear limit of 100/500 lobsters, per Amendment 3 to the FMP.	Yes	<p>DM 12/7/00</p> <p>Notice of determination of noncompliance; declaration of moratorium 66 FR 13443 3/6/00</p> <p>Effective Date: 5/1/01 if not in compliance before that date.</p>	EA 1/24/01	4/6/01	Cancellation of Federal moratorium. 66 FR 20202 4/20/01	Advisory letters signed 12/14. 12/1/00 letter from ASMFC – RI implemented emergency rule but will not be in compliance until rule is permanent. 12/5/00 met with RI reps – we put in emergency rule; in addition, since otter trawls comprise only 1.5% of the inshore catch, what are the conservation benefits here?
ACA	6/17/04	NY-Summer Flounder- failed to implement and enforce a recreational	Yes	DM 7/16/04	None	7/30/04	DM 8/4/04	Joint ASMFC-MAFMC FMP. Advisory letters signed 7/15/04. 7/6/04 NY met will NMFS AA, and on 7/7/04

		management program that achieves a 48.5% reduction in landings (in number) relative to the 2003 landings, per the FMP. In addition, NY must implement the coastwide default measures if an approved program is not implemented, per the provisions of Framework 2.						there was a conference call. NY commented that it proposed a reduction of about 20 % vs. the 48.5 % requirement - 48.5 % is not necessary for conservation; ASMFC never formally adopted the procedural process for determining states' projected landings and annual adjustment percentages outlined in Framework 2: and the use of MRFSS harvest estimates to establish an annually managed state-specific quotas is inappropriate. The new regulations were implemented by emergency rule. Because of a GCF determination, an EA was not completed, and the declaration and implementation of the moratorium (if needed) would have been by DM and a letter to the Governor only.
ASBCA	8/19/04	NJ-Striped Bass-failed to implement and enforce a minimum size limit of 28" and a bag limit of two fish or a recreational measure proven to be conservationally equivalent the Amendment 6 requirement.	Yes	DM 9/20/04 by DOC only. DOI never signed DM or FR notice.  DOC drafted a Notice of determination of noncompliance; notice of declaration of a moratorium and received a docket number.	None	9/27/04	9/28/04 Governor's letter	In 5/04, ASMFC approved 7 options for NJ to be in compliance: 6 slot limit options and Amendment 6 standard of 2 fish @ 28", and gave NJ until 8/1/04 to return to compliance or be found out of compliance at the August meeting. Meeting with State set for 9/13/04, but cancelled. We did received three letters from State dated Sept 2, 10, and 20, which indicated that the legislature must set new seasons and size limits and were to meet on 9/27/04 to pass bills (effective date would be 10/4/04 - Assembly already passed bill in June). With the threat of a moratorium

									beginning on 9/20/04, a special session of the Senate was scheduled for 9/20/04. This session was cancelled because of flooding in Trenton from Hurricane Ivan. Senate did pass bill on 9/27/04 and returned to compliance.
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Note:

- <sup>1</sup>ASBCA – Atlantic Striped Bass Conservation Act - DOC and DOI share responsibility for implementing regulations under the ASBCA. Advisory letters are not required under ASBCA.
- <sup>2</sup>ACA – Atlantic Coastal Fisheries Cooperative Management Act – DOC and DOI share responsibilities in implementing regulations under the ACA. Advisory letters are required under ACFCMA.
- <sup>3</sup>CZM issue - VA had actually repealed in 1992 its section of the Code where the CZM enforceable policies were listed. Therefore, we could not find on VA’s CZM website or in the VA’s nationally approved coastal management program (copy in SSMC4, NOAA’s National CZM Program – located under National Ocean Service), what the enforceable policies were. We had two conference calls with them 8/15 & 8/17/00 and even asked for a copy of the enforceable policies. On 8/17, we received a fax from VA of what they said were their there enforceable policies, but we could not figure out from what they faxed us what the enforceable policies were. VA pushed for the full the 90-day CZMA time period beginning with a Federal consistency determination, requested an additional 15 days beyond the required 45 days (9/15 letter), and disagreed with out consistency determination (10/3/00). In the end, regulations were issued prior to the 90-day period, with the justification that the Secretary would fail to meet his statutory responsibilities (30-day compliance time line).

**Table 5b. Number of Noncompliance Actions taken by States and Authority**

<b>State</b>	<b>Noncompliance under ASBCA 1987-2004</b>	<b>Noncompliance under ACA 1994-2004</b>	<b>Total</b>
NJ	4	3	7
DC	1		1
MD		3	3
MA		3	3
RI		2	2
VA		1	1
SC		1	1
NY		1	1
Total	5	14	19

**Table 6. Litigation for EEZ actions taken under the ASBCA and ACA.**

ACT SPECIES	ACTION LITIGATED	DESCRIPTION OF LITIGATION
ACA Weakfish 12/95	Closure of EEZ to fishing for and possession of weakfish	<p><i>North Carolina Fisheries v. Brown</i> - In November 1995, the Secretary, after consultations with ASMFC, USFWS, and the New England, Mid-Atlantic and the South Atlantic Fishery Management Councils, implemented a final rule to prohibit fishing for weakfish in the EEZ in accordance with the ACA. A suit by the state of North Carolina and North Carolina and Virginia commercial fishing organizations (Plaintiffs were North Carolina Fisheries Association, Inc., et al., and the Plaintiff-Intervenor was the State of North Carolina) resulted in an temporary injunction in enforcing the final rule in the EEZ off North Carolina only on December 20, 1995, and a ruling on February 16, 1996, that invalidated the rule by the U.S. Federal District Court for the Eastern District of Virginia Norfolk Division. The basis of the court's decision was that the ASMFC's Amendment 2 to the Weakfish FMP did not contain recommendations to the Secretary on management in the EEZ and, therefore could not be considered a valid FMP under the ACA. The Act was amended in 1996 to correct this technicality. Changes to the Act include: 1) ASMFC FMPs will no long need a recommendation to the Secretary regarding management measures in the EEZ; and 2) language regarding the requirement that regulations necessary to support the effective implementation of ASMFC FMPs was changed to measures compatible with the effective implementation of ASMFC FMPs.</p>
ACA Shrimp under Weakfish Rule 6/96	Requirement that shrimp vessels operating off GA use bycatch reduction devices (BRDs).	<p>GA suit over shrimp FMP - Under a requirement of the ASMFC's Weakfish FMP, the State of Georgia established a rule (GA DNR Rule # 391-2-4-08) that required the use of bycatch reduction devices (BRDs) by shrimpers operating in state waters effective June 1996. As a consequence of promulgation of this rule, the Georgia Fishermen's Association filed suit for injunctive and declaratory relief from the state rule in federal district court. Also named as parties to the suit were the ASMFC and the Secretary. The shrimpers alleged that the BRDs lost shrimp and marketable fish, and that such losses would deny them a livelihood. Moreover, the suit contended that the state's action was not supported by science.</p> <p>During preparation of a defense for the state's action, NMFS provided technical expertise and assistance regarding the BRD, including current data on shrimp bycatch characterization, and catch and effort data, to support Georgia's records regarding shrimping activities in state waters. NMFS also provided the state with: the status of the latest BRD technology that NMFS had developed and approved for use in the EEZ; information on prototype BRDs being tested for possible approval as certified BRDs; and access to technical experts on gear technology and harvesting practices.</p>

		<p>A compromise to the suit was reached on August 7, 1997, when the parties involved agreed to a settlement whereby the rule remained in effect, but an additional BRD (the North Carolina Diamond) was authorized to be used by shrimpers as part of a testing protocol for eventual approval as a certified BRD. The rule is still in effect and the state now has three certified BRDs that can be used by shrimpers when shrimping in state waters.</p>
<p>ACA Scup 6/97</p>	<p>State-By-State allocation</p>	<p><i>Commonwealth v. Daley</i> - 6/10/99 letter to ASMFC from NMFS stated that State is out of compliance, but a ruling issued by the District Court and Court of Appeals affects the Secretary's ability to implement a moratorium or to promulgate an emergency action to reestablish the state-by-state quotas for the summer period. The Court nullified the previous state-by-state distribution of the summer period quota and commanded the agency to promulgate a state-by-state quota system that is consistent with NS4. The Court also prohibited the agency from enforcing the overage provision of the state-by-state distribution scheme. In June 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 contained in Addendum 1 to the Scup FMP (section 9.1.2.3.7) underestimate the commercial landings of scup in Massachusetts; and that the state's quota is therefore too low, in violation of various provisions of the MSA. Massachusetts also alleged that the resulting quota share discriminated against residents of the Commonwealth. One of the problems complicating the ability of the management program to formulate a consensus on scup allocations is the need to collect better data on bycatch mortality of scup in near and offshore fisheries. On April 27, 1998, the U.S. District Court for the District of Massachusetts ordered (later upheld on appeal):</p> <ol style="list-style-type: none"> <li>(1) That portion of the 1997 regulatory amendment establishing a state-by-state allocation of the summer commercial scup fishery is void.</li> <li>(2) Any enforcement of the voided portion of the regulatory amendment, including the calculation and enforcement of overages is forbidden, and</li> <li>(3) The Secretary shall promulgate, in due course, a regulation that sets forth state-by-state quotas in compliance with National Standard #4.</li> </ol> <p>The District Court's order technically did not void 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 ASMFC under the terms of the Compact and the ISFMP Charter. Massachusetts did not include ASMFC in the lawsuit because they felt their state colleagues would understand their arguments, unlike the Council, and perhaps amend the FMP to avoid internal conflict so contrary to the mission, goals, and values of ASMFC.</p> <p>NMFS does not have an accurate historical record of scup landings in Massachusetts, and that inaccurate record</p>

		<p>was inappropriately used by the Council (and ASMFC) to establish Massachusetts' small summer quota of 362,000 lbs. for 1997. NMFS misses landings of fishermen who only hold state permits – those fishermen fishing for scup from small boats inshore from May through October and who sell to out-of-the-way but important dealers (a difference of MA – 1,432,000 lbs vs. NMFS – 671,400 lbs).</p> <p>One of the problems complicating the ability of the management program to formulate a consensus on scup allocations is the need to collect better data on bycatch mortality of scup in near and offshore fisheries. SF8 staff worked with the Northeast Region to investigate the feasibility of implementing a bycatch study, and allocated \$30,000 to the NEFSC to conduct a study, in 1999.</p> <p>The Court didn't necessarily agree with the State's challenge of the Federal regulations so much as it found that the NMFS record was insufficient to support the agency's decision. Therefore, the agency needed to create a better record.</p>
ACA American Lobster 12/99	Transfer of American Lobster management from MSA to ACA.	<p><i>Ace Lobster</i> - NMFS was sued over regulations (December 6, 1999, 64 FR 68228) to remove existing management measures issued under the authority of the MSA and replace them with the same and a number of new management measures issued under the authority of the ACA. The district court in Rhode Island entered judgment for the Federal government in the 3 consolidated lawsuits challenging the December 1999 American lobster regulations. The district court's order accepted the Magistrate's Report and Recommendation in its entirety. The Magistrate's report found: (1) the Secretary had authority to withdraw the Lobster FMP issued under the MSA and reissue regulations under the ACA; (2) the regulations implementing a flat trap limit, as opposed to trap limits based on historical participation, did not violate the ACA or the MSA national standards 1, 2, 4, 6 and 8 (the NS are incorporated into the ACA); (3) the Regulatory Flexibility Act analyses (IRFA and FRFA, including reasons for rejecting less economically burdensome alternatives) complied with the RFA requirements; (4) the requirement that Federal permit holders selecting two or more management areas must abide by the most restrictive measures in effect for any one of those management areas had adequate support in the record; but, largely because plaintiffs failed to articulate the precise basis for their attack on this provision, the court did not overturn it. The Appeals Court actually found that the Secretary did not properly consult during the creation of the rule, but when NMFS published a new rule in March 2003 limiting access to LCMA 3, 4 and 5 based upon historical participation, the case became moot. The Court dismissed the case with prejudice shortly thereafter in September 2003.</p>
ACA American	Location of boundary line separating 2 management areas	<p><i>Little Bay Lobster</i> -NMFS was sued by Little Bay Lobster Company in Federal district court in New Hampshire. Legal briefs were to begin in September 2001. This case challenges placement of a boundary line between two management areas as arbitrary and capricious. The District Court ruled in favor of NMFS in May</p>

Lobster 9/01		between two management areas as arbitrary and capricious. The District Court ruled in favor of NMFS in May 2002. In the decision, the Court stated that NMFS properly consulted, that the drawing of the line was based upon the best available science, and not arbitrary and capricious. The plaintiffs appealed. The Court of Appeals heard the case and on December 19, 2003, affirmed the lower court's ruling. In its opinion, the Court stated that even if NMFS did not adequately consult, the appellants could not establish that the failure would have changed the end result.
ACA American Lobster 1/02	Limit on number of lobsters taken in otter trawls	<i>Medeiros v. ASMFC, et. al.</i> - In January 2002, a RI lobsterman filed suit against the RI DEM and the ASMFC requesting that they suspend enforcement of the regulation that imposes a limit on the number of lobsters landed by fishermen who catch lobsters by otter trawl, claiming the regulation violates due process and equal protection clauses of the Constitution. His complaint related to the imposition of a possession limit for non-trap caught lobsters while trap fisherman were not held to the same limit. NMFS intervene with ASMFC to defend the constitutionality of the ACA. The case was argued in Court in July 2003 and addressed the Reserve Clause, wherein all powers not expressly granted to the Federal Government are reserved by the states. The District Court rendered an opinion adverse to the plaintiff on all counts. Relative to the Constitutional challenge, the Court said that the plaintiff did not have standing to challenge the Constitution's Tenth Amendment. The Plaintiff appealed and a hearing was held in the Appeals Court on March 9, 2005. The case is under advisement.

**Table 7. Exempted Fishing Permits (EFP) and Scientific Research Activity Letter of Acknowledgments (SRA).**

Date Application Received	Notification of a request for an EFP	EFP or SRA, species, and Applicant	Date Issued	Reason for Request
FY01 4/11/01  FY02 5/31/02  FY03 6/26/03  FY04 3/30/04	8/15/01 66FR42832  7/9/02 67FR45445  7/17/03 68FR42360  6/4/04 69FR31588	EFP Project Coordinator: Ms. Benjie Lynn Swan  Horseshoe Crab	FY01 9/28/01  FY02 8/1/02  FY03 8/21/03  FY04 7/12/04	On 4/21/00, and again on 12/16/03, ASMFC's Horseshoe Crab Management Board recommended to the Secretary of Commerce (Secretary) that biomedical companies with a history of collecting horseshoe crabs in the closed area be given an exemption to continue their historic levels of collection not exceed a combined harvest total of 10,000 crabs annually. In Fiscal Years 2001-2004, Limuli Laboratories, a biomedical company in Cape May Court House, New Jersey, was issued EFPs to collect 10,000 horseshoe crabs for data collecting and biomedical purposes in the closed area (Carl N. Schuster Jr. Horseshoe Crab Reserve (Reserve)) outside of Delaware Bay in the EEZ. From 10-15% of all horseshoe crabs collected were bled for biomedical purposes, weighed, measured, tagged, and released. Levels of activity, and morphometric data by sex (interocular distance) were also collected. All data were presented to the State of New Jersey, ASMFC, and NMFS.
FY01 7/13/01  FY02 8/16/02  FY03 7/23/03  FY04 8/13/04	Not required for SRA	SRA Project Manager: Dr. Jim Berkson  Chief Scientist Dr. David Hata  Horseshoe Crab	FY01 9/4/01  FY02 10/4/02  FY03 9/18/03  FY04 9/15/04	In 2001, ASMFC's Horseshoe Crab Stock Assessment Committee developed a strategy to implement an annual fishery-independent trawl survey for horseshoe crabs. ASMFC, NMFS, and the National Fish and Wildlife Foundation issued a contract for \$161K to Dr. Jim Berkson, Virginia Polytechnic Institute and State University (Virginia Tech.), to conduct a pilot trawl survey and design a protocol for the annual trawl survey. In subsequent years, the study has been funded by a Congressional NMFS budget line item (from \$650K to \$850K) to Virginia Tech. In Fiscal Years 2001-2004, Dr. Berkson has been issued SRAs to develop the protocol and conduct a horseshoe crab trawl monitoring survey for the entire Atlantic Coast. This survey provides abundance, distribution, and demographics information essential for fishery management of horseshoe crabs. All data was presented to ASMFC and NMFS.
FY03 7/11/02	11/12/02 67FR68556	EFP Contact Person:	FY03 1/27/03	An EFP was issued to Dr. Win Watson, University of New Hampshire (UNH), and Bonnie Spinazzola, Atlantic Offshore Lobstermen's Association (AOLA) to collect detailed abundance and size frequency data on the composition of offshore lobsters in four general

<p>FY04 2/17/04</p> <p>FY05 2/25/05</p>	<p>4/12/04 69FR19165</p> <p>4/4/05 63FR17070</p>	<p>Dr. Win Watson</p> <p>Co-Principal Investigator: Bonnie Spinazzola</p> <p>American Lobster</p>	<p>FY04 4/28/04</p> <p>FY05 4/27/05</p>	<p>offshore study areas (Hudson Canyon, Veatch Canyon, the Fifty Fathom Edge, Georges Bank and the Gulf of Maine Areas). This data includes sub-legals, egg bearing females, and legal lobsters. The project, including the lobster handling protocols, was developed in consultation with NMFS and UNH scientists, and was funded by, and under the direction of the Northeast Consortium, a group of four research institutions (Universities of New Hampshire and Maine, Massachusetts Institute of Technology, and Woods Hole Oceanographic Institute), which are working together to foster this initiative. All data was presented to ASMFC and NMFS. Each of seven commercial fishing vessels involved in this monitoring and data collection program would collect detailed abundance and size frequency data on the composition of all lobsters collected from one string of approximately forty traps, for the period from 1/27-12/31/03 (initial EFP), from 5/1/04-4/30/05, and under the current EFP from 5/1/05-4/30/06. The inclusion of a maximum of one trap per vessel, designated as a juvenile lobster collector trap, in the string of traps will be used to ensure adequate coverage of juvenile lobsters in the data collection study. This modified lobster trap would have a smaller entrance head, no escape vents, and would be made of a smaller mesh than the traditional offshore trap to catch juvenile lobsters in the 30-65 mm carapace length range. The smaller entrance head would exclude large lobsters from this trap and decrease the probability of cannibalism within the trap. With the exception of the one modified juvenile lobster collector trap, all traps fished by the participating vessels and all lobster retained would comply with all applicable lobster regulations. The applicant requested exemption from the following regulatory requirement: lobster trap escape vent requirement.</p>
<p>FY03 9/10/02</p> <p>FY04 11/24/03</p>	<p>11/27/02 67FR70935</p> <p>12/3/03 68FR67636</p>	<p>EFP Project Coordinator: Dr. Louis Daniel</p> <p>Weakfish</p>	<p>FY03 12/18/02</p> <p>FY04 Not issued</p>	<p>In Fiscal Year 2003, an EFP was issued to Dr. Louis Daniel, North Carolina Division of Marine Fisheries, to conduct a flynet characterization study, part of which would be in the closed area off Cape Hatteras. In addition, three proto-type turtle excluder devices (TEDs) developed by NMFS will be deployed in flynets in the closed area, while an additional flynet vessel would test the proto-type TEDs in the area north of Cape Hatteras, where flynets are permitted to operate. Additional terms of the study relate to sample design or address concerns raised by the ASMFC's Weakfish Fishery Management Board and its Technical Committee. The study would be terminated if any cumulative, monthly sample yields juvenile or undersized fish in excess of 10% of the total catch for that month. If an annual cap of 175,000 lbs of weakfish taken south of Cape Hatteras is reached, the study would end for that year. Dr. Daniel proposed a two-year study. This study will provide fishery managers with flynet information needed for future management of weakfish, once the stock is determined to be recovered. Only a portion of the study was completed in FY03 and Dr. Daniel requested a second year to complete the first year of the study. A requirement of a second year was that</p>

				the vessel operators involved in the study had to place in a fund up front moneys to cover an observer before a second EFP could be issued. The vessel operators agreed to this arrangement, but did not supply the money. Therefore, the EFP was not issued for the second year to complete the first year of the study.
FY03 10/30/02	2/25/03 68FR8741	EFP Project Coordinator: Dr. Hans Laufer  Royal Red Shrimp in Association with American Lobster Fishing	3/12/03	An EFP was issued to Dr. Hans Laufer, Department of Molecular and Cell Biology, University of Connecticut in conjunction with a grant received by the U.S. Department of Agriculture to carry out aquaculture trials and maturation experiments on 300-600 live adult royal red shrimp and determine the suitability of this species for aquaculture. The EFP allowed 1 federally permitted lobster vessel to fish a maximum of six modified lobster traps to obtain live specimens of royal red shrimp for the purposes of study and cultivation. The collection will occur during the course of routine commercial trap fishing operations for American lobster and red crab in lobster conservation management area 3, in the vicinity of Munson Canyon east to the Hague line.
FY05 9/27/04	10/21/04 (69 FR 61803)	EFP Contact Person: Dr. Win Watson	FY05 11/8/04	An EFP was issued to Dr. Win Watson, Professor of Zoology, University of New Hampshire (UNH), to allow a maximum of six participating commercial fishing vessels with Federal American lobster permits to collect temperature data and a limited number of eggs from berried female lobsters as part of a research project to monitor the movement of berried female lobsters at two inshore locations (areas around Portsmouth NH, and Friendship, ME) and two offshore locations (northern Georges Bank and Corsair/Lydonia Canyons). The EFP covers the period 11/8/04 – 12/31/05. This project would not involve the authorization of any additional trap gear in these areas, and all gear would conform to existing Federal lobster regulations. This EFP is a collaborative project involving UNH, the Lobster Conservancy, Friendship, Maine; the New England Aquarium, Boston, Massachusetts; and the Atlantic Offshore Lobstermen's Association, Candia, NH. Participants in this project are funded by, and under the direction of the Northeast Consortium, a group of four research institutions (UNH, University of Maine, Massachusetts Institute of Technology, and Woods Hole Oceanographic Institution) which are working together to foster this initiative. A total of 120 legal sized female lobsters carrying early-stage eggs will be fitted with small tidbit temperature-loggers, and then the movement and egg-development stages of these tagged females will be monitored until the eggs mature and are released. The objective of the project

				<p>will be to test the assumption that berried females speed up or slow down egg growth and development by moving to warmer or colder water in order to expose their eggs to water temperatures that result in hatching at an optimal time for larval growth and survival To test this hypothesis, when a tagged lobster is recaptured in commercial lobster gear, participating lobstermen will download thermal data from the tidbit temperature-logger, and also preserve a maximum of 6 eggs from each tagged lobster to allow researchers to estimate the egg developmental stage and time to maturity. The tagged lobsters will then be released unharmed. This EFP will waive the American lobster prohibition on removal of eggs specified at 50 CFR 697.7(c)(i-ii) for participating vessels.</p>
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**Table 8. Atlantic Coastal Fisheries Cooperative Management Act. Apportionment and Distributions for FY1996 - 1999. (\$1,000)**

YEAR	1996	1997	1998	1999
Distribution to the Northeast Regional Office				
ASMFC				
General	921.50	1,212.00	1,612.00	1,713.00
ACCSP	0	198.00	250.10	582.00
Total For ASMFC	921.50	1,410.00	1,862.10	2,295.00
ME	127.47	145.44	170.65	195.11
NH	80.35	114.94	134.02	153.02
MA	205.39	185.01	216.60	238.11
RI	121.24	140.81	163.29	186.65
CT	111.19	136.46	164.81	192.31
NY	140.34	153.07	185.07	223.43
NJ	163.26	176.03	210.08	245.31
PA	55.23	86.52	101.22	116.31
DE	104.74	136.92	163.41	188.74
MD	137.23	152.89	178.93	204.62
VA	147.85	161.60	184.88	221.26
PRFC	67.90	77.00	90.00	103.00
DC	29.10	33.00	39.00	40.00
TOTAL NE STATES	1,491.29	1,699.69	2,001.96	2,307.87
Distribution to Southeast Regional Office				
NC	148.45	162.42	191.04	222.45
SC	96.72	127.20	149.17	169.45
GA	89.22	122.12	139.13	159.87
FL	178.75	176.57	203.70	220.36
TOTAL SE STATES	513.14	588.31	683.04	772.13
Distribution to NMFS HQ				
Offices				
SF8	39.67	40.00	48.00	45.00
F/ST	8.40	12.00	24.00	25.00
F/HC	4.00	10.00	25.00	20.00
F/PR	4.00	4.00	8.00	16.00
F/NER	38.00	23.00	41.00	72.00
F/SER	22.00	24.00	26.00	80.00
CHESAPEAKE BAY PROGRAM	2.00	4.00	4.00	4.00
F/EN	0	0	0	0
F/ST to ACCSP	0	67.00	0	0
F/SF8 to ACCSP	0	0	791.90	860.00
F/NE to ACCSP	0	0	0	0
TOTAL FOR NMFS	118.07	184.00	967.90	1,122.00
Distribution to USFWS				
USFWS	97.00	100.00	110.00	125.00
USFWS to ACCSP	0	35.00	50.00	50.00
TOTAL FOR USFWS	97.00	135.00	160.00	175.00
TOTAL FUNDS AVAILABLE	3,141.00	4,017.00	5,675.00	6,672.00
NMFS Administrative	259.00	283.00	325.00	328.00
NOAA Assessment				
GRAND TOTALS	3,400.00	4,300.00	6,000.00	7,000.00

**Table 9. Federal Funding of ACCSP (\$1,000)**

Year	From ACA	From Fisheries Statistic*	Total
1997	300.00		300.00
1998	1,092.00		1,092.00
1999	1,492.00		1,492.00
2000	1,377.00		1,377.00
2001	1,623.20	1,500.00	3,123.20
2002	1,500.00	2,000.00	3,500.00
2003	1,500.00	2,000.00	3,500.00
2004	1,484.18	1,910.43	3,394.61
2005	1,478.48	1,971.31	3,449.79

\*Provided to NMFS under separate Congressional line item “Fisheries Statistics – ASMFC” for ACCSP minus assessments.

APPENDIX A

MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE NATIONAL MARINE FISHERIES SERVICE  
AND  
THE U.S. FISH AND WILDLIFE SERVICE  
FOR  
COOPERATIVE IMPLEMENTATION OF THE ATLANTIC COASTAL  
FISHERIES COOPERATIVE MANAGEMENT ACT  
(2002 - 2007)

**MEMORANDUM OF UNDERSTANDING  
PURSUANT TO THE ECONOMY ACT  
THROUGH WHICH  
NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND  
ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE  
IS PURCHASING SERVICES TO IMPLEMENT PROGRAMS OF  
THE ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT ACT  
FROM  
U.S. FISH AND WILDLIFE SERVICE, U.S. DEPARTMENT OF INTERIOR**

Agreement No. SF-004

1. PARTIES AND PURPOSE

This Memorandum of Understanding (MOU) establishes an agreement between the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC) and U.S. Fish and Wildlife Service (USFWS), U.S. Department of the Interior (DOI) through which NMFS will pay USFWS for services to assist in the implementation of the Atlantic Coastal Fisheries Cooperative Management Act.

2. BACKGROUND

Section 804 of the Atlantic Coastal Fisheries Cooperative Management Act (PL 103-206) (Act) directs the Secretary of Commerce, in cooperation with the Secretary of the Interior, to "develop and implement a program to support the interstate fishery management efforts" of the Atlantic States Marine Fisheries Commission (Commission). NMFS is requesting USFWS services in order to provide needed support to the interstate fishery management efforts, as directed by the Act. This MOU establishes procedures for cooperative development and administration by NMFS and USFWS of a program to support the management of Atlantic coastal fisheries.

The support program shall be developed in accordance with Section 804 of the Act, and shall include activities that facilitate, support, and enhance State cooperation in: (1) collection, management, and analysis of fishery management data; (2) law enforcement; (3) habitat conservation; (4) fishery research, including biological and socioeconomic research; and (5) fishery management planning.

A NMFS/USFWS Committee, established under a 1997 MOU, will continue to develop, implement, and administer the program pursuant to Section 804 of the Act. The Committee shall be responsible to the Assistant Administrator for Fisheries (Director, NMFS), NOAA, DOC, and the Director, USFWS, DOI, and shall provide them with advice and recommendations regarding matters deemed appropriate for efficient administration of the Act.

In performance of its functions, the Committee shall: (1) develop, implement, and coordinate a jointly administered support program to include the activities outlined in section 804 of the Act; (2) meet at least annually with the Commission to establish an annual work plan and to review and if necessary, revise this MOU to meet the changing needs of the program; (3) recommend delegation of duties between the two agencies to support most effectively and efficiently the Commission and the States' management programs for coastal and interjurisdictional resources; (4) meet at least annually to review the program; and (5) establish a mechanism to work closely

with the Commission and the States to identify support needs of the States to meet the objectives of the Act.

A Committee Chair shall be alternately designated each fiscal year by the agency directors. A member from the other agency shall serve as scribe. Regular Committee meetings shall be held at least annually. In addition to its assigned functions, the Committee shall: 1) designate the lead agency for each activity listed under Section 804 of the Act, and 2) identify respective funding necessary to carry out these activities. Special meetings may be held at anytime upon request of the Chair, two or more Committee members, or other representatives of the Secretaries of Commerce and Interior responsible for the administration of the Act. The Commission, States, and other interested parties shall be invited to attend all meetings.

### 3. AUTHORITY

The authorities for NMFS and USFWS to enter into this agreement are:

- (1) the Economy Act, 31 U.S.C. § 1535;
- (2) the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. § 5101, *et seq.*

### 4. ECONOMY ACT FINDINGS

As set forth in the attached “Determinations and Findings” Pursuant to 48 CFR 17.503, ANMFS warrants that sufficient funding amounts are available, that this agreement is in the best interest of the United States Government, and that the services requested cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

Pursuant to 48 CFR 17.503, NMFS warrants that the servicing agency has capabilities or expertise to enter into a contract for such supplies or services that are not available within the requesting agency.

USFWS warrants that it is able to provide or procure by contract the requested services. USFWS also warrants that it has statutory authority for the contractual action and will comply fully with the competition requirements of part 6 of the Federal Acquisition Regulations as well as all other legal or regulatory requirements applicable to the contract.

### 5. TERMS AND CONDITIONS

NMFS hereby agrees to transfer \$100,000 to USFWS for assistance in carrying out section 804 during 2002 in accordance with the attached statement of work (Attachment A). NMFS further agrees to provide USFWS up to \$200,000, at NMFS’ discretion, for each of the next five fiscal years, for assistance in carrying out section 804 in accordance with the statement of work for that year. Funding is subject to NMFS making the necessary findings under the Economy Act, 31 U.S.C. 1535, including the availability of funds.

### 6. TRANSFER OF FUNDS

NMFS shall obligate funding to the USFWS and make payments via GSA’s On-Line Payment Collection (OPAC) system. This agreement may be amended to add funding for additional

projects by mutual consent for the duration of this agreement, subject to the availability of funds.

## 7. CONTACT

Contacts for each party to this agreement are:

For NMFS:

Anne Lange	Phone: (301)713-2334 x 184
Chief, State-Federal Fisheries Division	Fax: (301)713-0596
Office of Sustainable Fisheries	E-Mail: anne.lange@noaa.gov
National Marine Fisheries Service	
1315 East-West Highway, Room 13504	
Silver Spring, MD 20910	

For USFWS:

Daniel Kuzmeskus	Phone: (413)253-8400
Fishery Biologist (Management)	Fax: (413)253-8488
U.S. Fish and Wildlife Service	E-Mail: Dan_Kuzmeskus@fws.gov
300 Westgate Center Drive	
Hadley, MA 01035-9589	

Each party shall promptly notify the other in writing of any changes in its point of contact.

## 8. DURATION OF AGREEMENT, AMENDMENTS AND MODIFICATIONS

This agreement will become effective when signed by all parties and expire on September 30, 2007. The parties will review this agreement annually to determine whether it should be revised, renewed, or canceled.

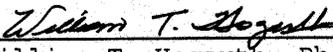
This agreement may be amended by mutual written agreement, and may be terminated by providing 60 days written notice to the other party. This agreement is subject to the availability of funds.

This agreement is not intended to in any way modify, obviate or otherwise precludes responsibilities and privileges provided to the Federal Agencies under the Commission's Interstate Fisheries Management Program Charter or changes in any way their respective statutory responsibilities.

## 9. Resolution of disagreements

Nothing herein is intended to conflict with current DOC or DOI directives. If the terms of this agreement are inconsistent with existing directives of either of the agencies entering into this agreement, then those portions of this agreement which are determined to be inconsistent shall be invalid, but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished either by an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of both parties.

Should disagreement arise on the interpretation of the provisions of this agreement, or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement on interpretation is not reached within thirty days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

  
\_\_\_\_\_  
William T. Hogarth, Ph.D.  
Assistant Administrator for Fisheries,  
National Oceanic and Atmospheric Administration  
U. S. Department of Commerce

MAR 11 2002

Date

  
\_\_\_\_\_  
Steve Williams  
Director  
U.S. Fish and Wildlife Service  
U.S. Department of Interior

4/11/02

Date

## Appendix B.

### History of the Implementation of the MOU between the Services for cooperation under the ACA.

A MOU between the Services to establish procedures for supporting the ASMFC in the implementation of the ACA, was signed in March of 1994, and updated in 1997 and 2002. The MOU establishes the membership of a joint NMFS and USFWS Committee (MOU Committee), calls for annual meetings of the MOU Committee to coordinate support of the ASMFC, and requires development of a work plan that documents the agencies' support for the implementation of the ACA.

The following excerpts from previous work plans provide information on some of the actions and accomplishments achieved under the MOU.

## **1) Funding**

The history of funding for the ACA is presented in Table 1 (years 2000 through 2005) and in Table 7 (years 1996 through 1999).

### Funding Procedures

The following describes the process for apportioning ACA funds:

1. The funds are divided among NMFS, USFWS, ASMFC, ACCSP, and the States;
2. The majority of funds are given to the States, ASMFC and ACCSP;
3. NMFS apportions funds among the States based on the ASMFC's recommended formula;
4. Administration of funding to Northeast States, ASMFC, and ACCSP is handled by the NMFS' Northeast Regional Office, and funding to Southeast States is administered by the NMFS' Southeast Regional Office;
5. Internal distribution of funds within NMFS is used primarily to: support travel to ASMFC meetings, conduct workshops and research related to ACA implementation, support limited ACA staff, and for the implementation of ACCSP;
6. USFWS funds are used to: support travel to ASMFC meetings, conduct research on species in ASMFC FMP, provide for plan writers for ASMFC FMPs, and for the participation of the ACCSP; and
7. The ACCSP funds are distributed to ASMFC and to partner agencies, based on an annual competitive process. The ACCSP Coordinating Council makes decisions on the distribution of the ACCSP funds in the fall of each year and notifies SF8 of those distributions. Funds allocated to NMFS are transferred to the appropriate office by SF8: 6-month and annual reports are required to be submitted to the ACCSP. Funds allocated to state partners and ASMFC are handled through the NOAA Grants Office by the NMFS' Northeast and Southeast Regional Offices. State grant reports are submitted both

to NOAA and to ACCSP.

Unless other criteria/procedures are developed, NMFS will continue this approach for distribution of ACA funds. Administration of fiscal year funds to States is reviewed by SF8 staff.

## **2) Personnel**

In the 2001-2002 work plan, we reported that two Committees; the Interstate Tagging Committee and the NEAMAP Program Committee (representing Maine - North Carolina), had been added to ASMFC. NMFS' Northeast Fisheries Science Center Director will represent NMFS on the NEAMAP committee, while USFWS representation would be determined in the future. It was also noted that large numbers of the Services' personnel not listed in the work plan indirectly supported ASMFC by working on programs which provide, integrate, and analyze information used by the ASMFC.

NMFS provided staff support to the ASMFC Law Enforcement Committee for coordination of their activities during 1995-2001. In 2002, ASMFC contracted with a former state law enforcement officer from Maryland to coordinate activities of the ASMFC Law Enforcement Committee in order to improve law enforcement cooperation among fisheries agencies.

## **3) Outreach**

In 1997, SF8 personnel, in cooperation with the USFWS and the ASMFC, developed a one-page fact sheet about the ACA, including a description of NMFS and USFWS' roles in the ACA process. This fact sheet was updated in 1999, and 2000 copies were provided to NMFS, USFWS and ASMFC for distribution to the public.

In 2000, SF8 personnel in cooperation with USFWS personnel prepared a briefing document with overheads that describe the ACA and its accomplishments to date. The target audiences for this presentation are Congressional staff, representatives of the fishing industry, and the general public. SF8 personnel also provided Internet access to information about the ACA through the SF8 Homepage.

## **4) Regulations**

Draft procedures for determination and implementation of moratoria for State noncompliance, under the ACA, have been developed by NMFS (see Appendix C). In addition, operational guidelines for development and implementation of fishery management actions under the Atlantic Coastal Fisheries Cooperative Management and Atlantic Striped Bass Conservation Acts are currently under review and will be available, during 2005.

### EEZ Regulations

A history of EEZ regulations under the Atlantic Coastal and Atlantic Striped Bass Acts is

presented in Table 4.

#### Noncompliance Determination

A history of noncompliance determinations under the Atlantic Coastal and Atlantic Striped Bass Acts is presented in Tables 5a and 5b.

#### History of Litigation under the Atlantic Coastal and Atlantic Striped Bass Acts:

A history of litigation under the Atlantic Coastal and Atlantic Striped Bass Acts is presented in Table 6.

### **5) Management Planning**

Coastwide statistics - Recognizing management's need for high quality fisheries data, special fisheries statistics and data policy workshops were held in 1996 to discuss development of a coastwide statistics program. In order to further support cooperative statistics programs, NMFS apportioned \$300K of FY 1997 ACA funds to support development of the Atlantic Coastal Cooperative Statistics Program (ACCSP) (Tables 8 and 9). ACA funds continued to support the ACCSP, with subsequent contributions ranging from \$1,092K to \$1,623K during FY 1998-2001. Since FY 2001, ACA funds for ACCSP have averaged around \$1,500K. In addition, Congress provided in FY 2001, \$1,500K to support ACCSP through a separate Fisheries Statistics-ASMFC line item, to be administered by the NMFS' Office of Science and Technology. This was increased to \$2,000K for FY 2002-2005. The USFWS also provided a program coordinator to support this effort, during FY 1997-1999. Table 9 lists Federal funds that have been available to the ACCSP program since FY 1997.

Observer coverage - NMFS funded NEFSC to provide observer sampling in the 1998 fall-winter trawl and gillnet fisheries from MA to NC, in order to obtain data on the bycatch of striped bass. A report of this work was prepared during summer 1999, and results of this study were incorporated into the 1999 striped bass stock assessment. NMFS also funded NEFSC to provide observer sampling in the 1999 fall-winter offshore squid fisheries to obtain data on the bycatch of scup to address concerns of the magnitude of this bycatch relative to directed inshore harvest.

Protected Resources - In order to improve coordination of protected or endangered species programs with FMPs, NMFS' Office of Protected Resources (F/PR) provided funds in 1995 to the ASMFC for a Protected Species workshop on interactions of protected species in state waters fisheries. F/PR continues to provide support strengthening protected resources input into FMPs.

Invasive Species - The ASMFC held a workshop on potential benefits and risks of introducing the Asian oyster into waters of the Chesapeake Bay in May 2002. This workshop provided information on possible impacts of this localized introduction on other Atlantic coast jurisdictions. The workshop conclusions were summarized in ASMFC Special Report #74. In December 2003, the Policy Board agreed that the staff would work with Maryland, Virginia, and the Potomac River Fisheries Commission to develop a proposal detailing the ASMFC's involvement regarding non-native oysters.

## APPENDIX C

### MORATORIUM PROCEDURES

The following information outlines the past procedure for the implementation and withdrawal of a moratorium on fishing in state waters under the Atlantic Coastal Fisheries Cooperative Management Act (ACA), 16 U.S.C. 5101 et seq. NOAA Fisheries is in the process of reviewing past noncompliance actions and may refine or alter its procedures upon completion of this review. This work plan may be updated pending the results of the review.

#### **I. ASMFC Notification of Noncompliance**

Action on the part of the Secretary of Commerce (Secretary) begins when the Chairman of the Atlantic States Marine Fisheries Commission (ASMFC) notifies the Secretary that a state is not in compliance with the provisions of an ASMFC FMP. This notification is also sent to the Secretary of Interior and must be signed and dated by the Chairman or his designee, and should contain the following:

1. A written request for Secretarial action from the ASMFC Chairman to the Secretary that the ASMFC has determined under 16 USC 5104 that the state has not complied with the applicable FMP;
2. An identification of the FMP, including the references and conditions relating to the state's requirements to conform to the provisions of the FMP;
3. A description of the specific violation of, or act of noncompliance with, the provisions of the FMP. This should include timing, reasons, and background, along with any unsuccessful efforts the state has made to comply with the provisions of the FMP;
4. Discussion of potential actions available to correct the problem, including any already attempted by the state, as well as the alternative preferred by the ASMFC;
5. ASMFC views of whether or not Secretarial action is necessary for conservation;
6. Discussion of possible effects of the moratorium on other Coastal Fishery Management Agencies, and other related Interstate or Federal FMPs; and
7. Depending on the ongoing efforts of the noncompliant state, the ASMFC may recommend that the Secretary delay the effective date of the moratorium for up to six months.

#### **II. Secretarial Responsibilities**

The Secretary delegated his/her authority under the ACA to the Assistant Administrator for Fisheries (AA) on June 4, 1996, with the proviso that the Secretary be advised by the AA before any final action is taken with respect to declaring a moratorium under the noncompliance provision of the Act.

Upon receipt of notification of noncompliance from the ASMFC, the AA has 30 days to make a determination as to whether or not he/she concurs with the ASMFC.

The AA will respond to ASMFC's notice of noncompliance in the following manner:

1. Once notification letter is complete (contains notification requirements stated under this appendix section I), immediately send a letter to the Executive Director of ASMFC, with a copy to the Chairman of ASMFC acknowledging receipt of their letter of noncompliance, which formally begins the 30-day regulatory review/analysis procedures for a compliance determination by the AA. In addition, immediately send out letters that indicate that NOAA Fisheries has received a noncompliance determination from ASMFC to: (1) The Governor of the noncompliant state, (2) the Director of the Fisheries Management Agency of the noncompliant state, (3) the Fisheries Management agencies of neighboring states, (4) the Headquarters Office of the U.S. Fish and Wildlife Service, and (5) the Chairmen of the appropriate Fishery Management Council(s). The notification will indicate what the Secretary's requirements are under the Act, request comments, and advise the state found out of compliance that it may, upon request, meet with and present comments directly to NOAA Fisheries within 30 days from the day the Secretary was notified;
2. AA will notify the Secretary, in accordance with the delegation of authority, that a noncompliance determination has been received from the ASMFC, and that the AA has 30-days to make a determination. In accordance with the delegation of authority, the AA shall advise the Secretary before the AA can sign off on the final action (a Decision Memorandum) to declare a moratorium.
3. Establish a noncompliance evaluation committee (NEC), consisting of NOAA Fisheries headquarters and regional personnel, and possibly a representative of the U.S. Fish and Wildlife Service. The Chairman of the NEC shall be the senior NOAA Fisheries representative or his designee. The NEC shall, as appropriate, solicit any further comments needed, and shall arrange a meeting with the concerned state, if requested, as part of the evaluation of noncompliance.
4. The NEC shall review ASMFC's finding of noncompliance and any further comments received prior to the 25<sup>th</sup> day after receipt of the notice of noncompliance from the ASMFC Chairman, and report its findings to confirm or reject the recommendation of ASMFC to the AA. The determination of compliance/noncompliance is the sole responsibility of the AA (subject to the

- Secretary being advised) and is to be based on the information presented by, and the recommendations of, the NEC; and
5. Upon a determination of noncompliance by the AA, and after the Secretary has initialed that he/she has been advised of a possible moratorium by the AA, the AA will proceed to establish a moratorium in the noncompliant state.

### **III. Establishing a Moratorium**

If the AA determines that the state in question is in compliance (thereby rejecting ASMFC's recommendation), a letter will be sent to all parties listed under this appendix section II stating the reasons for the decision. If the AA determines that the state in question is not in compliance, the AA, in the past - see table 5a, has established a moratorium in the noncompliant state by various methods: a notice, an interim final rule, a final rule, and a letter to the Governor. NOAA Fisheries policy on how to establish a moratorium is in transition and continues to develop. Once the policy has been developed, this work plan will be updated.

### **IV. ASMFC Notification of Compliance**

When the AA is notified by ASMFC that the state in question is now in compliance, and that ASMFC is withdrawing its determination of noncompliance, the NEC shall again review all the pertinent documents and information, including those submitted by the Secretary of Interior, the noncompliant state, ASMFC, the enforcement agencies, and any other source of information pertaining to compliance by the state to the provisions of the FMP covering the species included in the moratorium.

1. AA concurrence. If the NEC is satisfied that the state is now in compliance, and the AA is notified and concurs, the AA, in the past, has proceed to cancel the moratorium in the noncompliant state depending on how the moratorium was established. The cancellation of a moratorium is also in transition and continues to develop. Once the policy has been developed, this work plan will be updated
2. AA nonconcurrence. If the NEC disagrees with ASMFC's determination that the state is now in compliance, and the AA is notified and concurs, the AA will immediately notify by letter all parties listed under this appendix section II of the reasons for the decision, and that the effective date of the moratorium is still in affect.