

Committee on Natural Resources  
Rob Bishop, Chairman  
Hearing Memorandum

December 3, 2015

To: All Natural Resources Committee Members

From: Majority Staff, Subcommittee on Water, Power and Oceans (x5-8331)

Hearing: Full Committee Oversight Field Hearing on “*Restoring Atlantic Fisheries and Protecting the Regional Seafood Economy.*”

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**Hearing Overview**

On Monday, December 7, 2015 at 10:00 a.m. (EST), in Riverhead, New York, the Committee on Natural Resources will hold an oversight field hearing on “*Restoring Atlantic Fisheries and Protecting the Regional Seafood Economy.*” This hearing will focus on challenges relating to the management, access to and science of key commercial and recreational fisheries in the parts of the Atlantic region.

**Policy Overview**

- The mid-Atlantic regional marine economy supported nearly 17 million full and part-time jobs in 2012 and generated a combined gross state product of all included states of \$2.7 trillion.<sup>1</sup> However, some in the fishing industry have expressed concerns that conflicting science on affected fisheries stocks has inhibited access to these resources for both commercial and recreational anglers.
- Two key species for both recreational and commercial harvest in the area, striped bass and summer flounder, are experiencing overall recommended harvest reductions of 25 percent<sup>2</sup> and 29 percent,<sup>3</sup> respectively.
- This hearing will focus on the lack of science and inadequate data collection used in the management of these key species as well as other potential federal regulatory issues in the region that could hinder access to these fisheries and hurt the regional seafood economy.

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<sup>1</sup> [National Oceanic and Atmospheric Administration: Fisheries Economics of the United States 2013, October 2015.](#)

<sup>2</sup> [Atlantic States Marine Fisheries Commission: ASMFC Atlantic Striped Bass Board Approves State Implementation Plans to Reduce Harvest, February 6, 2015.](#)

<sup>3</sup> [Mid-Atlantic Fishery Management Council fact sheet: Summer Flounder Catch and Landings Limits – 2016 Reductions, August, 2015.](#)

**Witnesses** (*listed in alphabetical order*)

*Ms. Bonnie Brady*  
Executive Director  
Long Island Commercial Fishing Association  
Montauk, New York

*Mr. Greg DiDomenico*  
Executive Director  
Garden State Seafood Association  
Trenton, New Jersey

*Mr. Jim Donofrio*  
Executive Director  
Recreational Fishing Alliance  
New Gretna, New Jersey

*Mr. Kerry Heffernan*  
Chef, Grand Banks  
Hudson River Park, New York

*Captain Joe McBride*  
Montauk Boatmen & Captains Association  
East Hampton, New York

*Mr. Patrick Paquette*  
Basic Strategies  
Hyannis, Massachusetts

*Dr. Paul Rago*  
Branch Chief, Northeast Fisheries Science Center  
National Oceanic and Atmospheric Administration  
Woods Hole, Massachusetts

**Background**

Each state in the Atlantic region manages its own fisheries in state waters (0-3 miles from shore) or collectively through the Atlantic States Marine Fisheries Commission. Fisheries in federal waters (3-200 miles from shore) are managed by the National Oceanic and Atmospheric Administration (NOAA) through the applicable fishery management council (in this case the Mid-Atlantic Fishery Management Council). According to NOAA, mid-Atlantic commercial fishermen grossed \$458 million in landings revenue in 2013.<sup>4</sup> Key species for both commercial and recreational anglers are striped bass and summer flounder.<sup>5</sup>

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<sup>4</sup> [Id at 1](#)

<sup>5</sup> [Id at 1](#)



Picture 1: Striped Bass caught off of Montauk, NY.

Source:

<http://www.montauksurfmasters.com>

New York's coastline allows commercial and recreational anglers to fish for striped bass and summer flounder. The unique characteristic of Long Island is ideal for saltwater fishing as it is situated in an area where both northern and southern fish stocks aggregate.<sup>6</sup> According to NOAA, in 2013 the New York commercial fishing industry supported almost 50,000 jobs and more than \$1.4 billion in income, while the recreational industry supported an additional 3,835 jobs and generated more than \$185 million in income.<sup>7</sup>

The New York State Department of Environmental Conservation (DEC) generally manages the state's marine water and NOAA manages federal waters.<sup>8</sup> The DEC has the authority to set fishing seasons and size and retention limits and issue marine fishing licenses and permits for both commercial and recreational fisheries within state waters.<sup>9</sup>

DEC also manages recreational and commercial fishery data collection programs: for recreational anglers a voluntary online "angler logbook," and for commercial fishermen mandatory electronic reporting. The recreational angler logbook is part of a larger state-federal Atlantic Coastal Cooperative Statistics Program, which allows state, regional, and federal fishery management bodies to coordinate data collection and fishery management.<sup>10</sup>

One key species—the Atlantic striped bass—is a migratory species that poses unique management challenges as it routinely crosses state boundaries and swims up rivers to spawn in the spring.<sup>11</sup> In an effort to establish consistent and coordinated management of the migratory species among states, the Atlantic States Marine Fisheries Commission's (ASMFC) Striped Bass Management Board manages the species in state waters.<sup>12</sup>

The ASMFC, comprised of state fishery managers from each participating Atlantic coastal state from Maine to Florida, was established in 1942 under an interstate compact and serves as an entity for the coastal states to coordinate fishery resource management.<sup>13</sup> For striped bass, the states agree on and set a management goal for the entire state water fishery which usually consists of a percentage increase or decrease in harvest over the previous year.<sup>14</sup>

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<sup>6</sup> <http://www.dec.ny.gov/outdoor/7755.html>

<sup>7</sup> [Id at 1](#)

<sup>8</sup> [Id at 6](#)

<sup>9</sup> [Id at 6](#)

<sup>10</sup> <http://www.accsp.org/history>

<sup>11</sup> <http://www.asmfc.org/species/atlantic-stripped-bass>

<sup>12</sup> [Atlantic States Marine Fisheries Commission: Addendum IV to Amendment 6 to the Interstate Fishery Management Plan for Atlantic Striped Bass, October 2014.](#)

<sup>13</sup> <http://www.asmfc.org/about-us/program-overview>

<sup>14</sup> [Id at 12](#)

Once the management goal has been agreed to by the ASMFC, individual states can, if they wish, set their own management plans in a process called “conservation equivalency.” If the ASMFC technical committee finds that the individual state’s plan meets the parameters of the overall management goal already agreed to by the states, that individual state’s plan will go back to a full vote by the ASMFC.<sup>15</sup> Conversely, if a specific state is found by the other participating states to be out of compliance with the plan approved by the ASMFC, the states can elect, by unanimous consent, to notify the U.S. Secretary of Commerce who is authorized to order the out-of-compliance state’s waters be shut down to striped bass fishing.<sup>16</sup>

NOAA manages the species in federal waters. However, commercial and recreational harvest of striped bass in federal waters has been prohibited with the implementation of the Atlantic Striped Bass Conservation Act of 1984.<sup>17</sup> While the stock has rebounded significantly since the 1980s, NOAA has not lifted the moratorium on fishing in federal waters despite a 2003 recommendation by the ASMFC that the moratorium be lifted.<sup>18</sup>

The prohibition on harvesting or possessing striped bass in federal waters has caused a unique issue within Block Island Sound, a strip of federal water between Montauk, New York, and Block Island, Rhode Island.<sup>19</sup> Some believe that this small strip of federal water creates regulatory confusion for fishermen, sometimes resulting in a hefty fine for illegal possession of a striped bass in federal waters that was caught in neighboring state waters.<sup>20</sup>

However, others argue there is no issue, and that a resolution could have the unintended consequence of diminishing continuity among federal fisheries which are currently prohibited from harvest.<sup>21</sup> This hearing will, in part, explore this unique situation, and representatives from multiple user groups will be able to weigh in on this issue and possible solutions.

Another vital species to the mid-Atlantic economy is Summer Flounder, more commonly known as “fluke.” While fluke range from Canada to Florida, they are most abundant in the mid-Atlantic region.<sup>22</sup> According to the ASMFC, fluke are “one of the most sought after commercial and recreational fish



Picture 2: Summer Flounder

Source: NOAA

<http://www.nefsc.noaa.gov/rcb/photogallery/flatfish.html>

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<sup>15</sup> [Id at 11](#)

<sup>16</sup> [Public Law 98-613: the Atlantic Striped Bass Conservation Act, October 31, 1984.](#)

<sup>17</sup> [Id at 12](#)

<sup>18</sup> [Atlantic States Marine Fisheries Commission: Amendment 6 to the Interstate Fishery Management Plan for Atlantic Striped Bass, February 2003.](#)

<sup>19</sup> [Submitted testimony of Mr. Paul Forsberg, President of Viking Fishing Fleet. To House Committee on Natural Resources, 112<sup>th</sup> Cong., Legislative Hearing on H.R. 3906, H.R. 6007, H.R. 6096, July 19, 2012.](#)

<sup>20</sup> [Id at 19](#)

<sup>21</sup> [Submitted testimony of Mr. Jim Hutchinson, Jr., Managing Director of the Recreational Fishing Alliance, to House Committee on Natural Resources, 112<sup>th</sup> Cong., Legislative Hearing on H.R. 3906, H.R. 6007, H.R. 6096, July 19, 2012.](#)

<sup>22</sup> <http://www.asmfcc.org/species/summer-flounder>

along the Atlantic coast,” with more than 17 million pounds being harvested in 2014.<sup>23</sup> Like striped bass, fluke is managed in state waters by the ASMFC and in federal waters by NOAA.<sup>24</sup> However, fluke can be caught and retained in federal waters, requiring much more cooperation between state, regional, and federal fishery managers to ensure continuity between fishery regulations in state and federal waters. Also, unlike striped bass where only the commercial sector can be managed under a quota, both the commercial and recreational fisheries for fluke are ultimately managed under a quota system.<sup>25</sup>

Currently, under the quota system for fluke, the commercial fishery receives 60 percent and the recreational fishery receives 40 percent of the overall quota set for a given year.<sup>26</sup> While this split can cause some disagreement among the different user groups, the most contention within the Northeast fluke fishery is derived from the state-by-state allocations, where NOAA and the ASMFC used historical state landings data to determine state allocations. Some states have argued that changes in the resource status and fishery performance warrant a reallocation of the overall quota among states.<sup>27</sup> This issue will be discussed during the hearing with testimony from user groups representing different states and federal fisheries managers.

Controversy over fluke fishing has increased due to new developments within the fishery. In 2013 and 2014, it was discovered that a significant number of fluke had been illegally taken under the Mid-Atlantic Fishery Management Council’s Research Set-Aside program.<sup>28</sup> Subsequently, a 2015 stock assessment update for fluke found that the stock was being overfished – mostly attributed to below-average year classes from 2010-2013.<sup>29</sup> The findings of the 2015 assessment contrast with the last fluke assessment in 2013 that found the stock in good shape, with no overfishing and not being overfished.<sup>30</sup>

As the 2015 assessment illustrates a significant decrease in the health of the stock, a 29 percent reduction in total fluke quota has been recommended for the 2016 fishing season.<sup>31</sup> However, this assessment and the resulting recommended reductions have been met with staunch criticism from industry – many of whom were taken by surprise by the 2015 assessment. According to one angler: “We see a lot of flounder. We raised the [size] limit and saved a lot of fish. It looks like it recovered and then the next year they say we have a problem.”<sup>32</sup>

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<sup>23</sup> [Id at 22](#)

<sup>24</sup> [Atlantic States Marine Fisheries Commission: Addendum XXVI to the Summer Flounder, Scup, Black Sea Bass Fishery Management Plan, February 2015.](#)

<sup>25</sup> [Id at 24](#)

<sup>26</sup> [Id at 24](#)

<sup>27</sup> [Id at 24](#)

<sup>28</sup> [Id at 22](#)

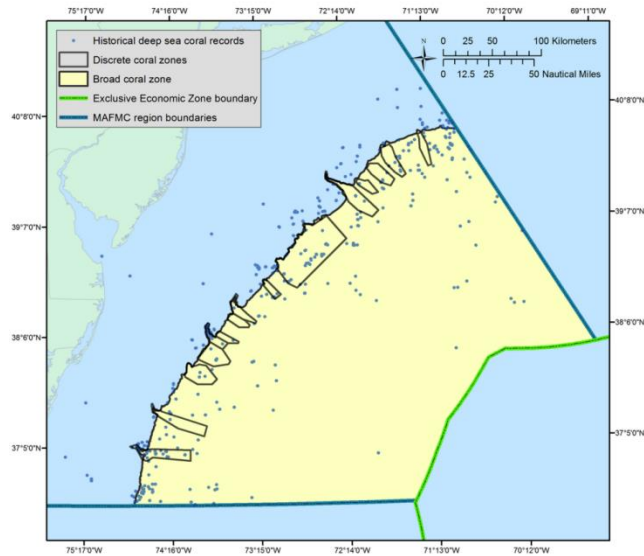
<sup>29</sup> [National Oceanic and Atmospheric Administration: Stock Assessment Update of Summer Flounder for 2015, August, 2015.](#)

<sup>30</sup> [Mid-Atlantic Fishery Management Council fact sheet: Summer Flounder Catch and Landings Limits – 2016 Reductions, August, 2015.](#)

<sup>31</sup> [Id.](#)

<sup>32</sup> [Press of Atlantic City: 2016 flounder cuts could be reduced from 43 to 27 percent, August 2, 2015.](#)

While fishery science and stock assessments are often used as a means to hinder user access, the potential designation of national marine monuments has created recent controversy in the region. Petitions by Pew<sup>33</sup> and the Conservation Law Foundation (CFL)<sup>34</sup> have called on President Obama to use his authority under the Antiquities Act to create the first Marine National Monument in the Atlantic, off the coast of Cape Cod, Massachusetts. According to CFL, aside from prohibition of commercial fishing activities, permanent protections in this area are necessary to “safeguard these fragile seascapes from sand and gravel mining, oil digging, and other potentially destructive activities.”<sup>35</sup> Opponents of the potential designation, however, point out these grounds are already protected through the regular process under the Magnuson-Stevens Act.



Picture 3: Deep Sea Coral Zones established by the Mid-Atlantic Council.  
 Source: <http://www.mafmc.org/actions/msb/am16>

The New England Fishery Management Council Chairman, Mr. Terry Stockwell, stated that existing protections for the proposed areas have been reinforced by the Council when it voted in April 2015 to continue to restrict fishing in roughly 530 square miles on Cashes Ledge.<sup>36</sup> While New York’s fisheries are not managed under the New England Fishery Management Council, the proposed monument encompasses the same sort of “deep sea coral canyons and seamounts” for which the Mid-Atlantic Fishery Management Council recently took significant steps to protect more than 38,000 square miles.<sup>37</sup>

Commercial fishermen and advocacy groups have grown increasingly wary of the Obama Administration “replacing [the Council’s] collaborative, open management with top-down Presidential action...”<sup>38</sup> On September 29, 2015, the House Subcommittee on Water, Power and Oceans held an oversight hearing on this and other proposed national marine monuments to gather more information on the proposals and to allow user groups a forum to weigh in on these issues that would directly impact their livelihoods. More recently, on October 7, during the full Committee markup of H.R. 2406, the SHARE Act,<sup>39</sup> an amendment<sup>40</sup> offered by Ms. Radewagen

<sup>33</sup> [Pew Charitable Trusts, Take Action: Permanently Protect the ‘Grand Canyons,’ Sea Mountains, and Cashes Ledge off New England’s Coast \(petition\)](#)

<sup>34</sup> [Conservation Law Foundation, Tell President Obama: Marine National Monument for All of New England’s Ocean Treasures \(petition\)](#)

<sup>35</sup> [Conservation Law Foundation, Hundreds show to comment on Marine National Monument proposal, September 16, 2015](#)

<sup>36</sup> [The Gloucester Times: City joins fight against marine monument plan, September 18, 2015](#)

<sup>37</sup> [Mid-Atlantic Fishery Management Council: Mid-Atlantic Council Approves Deep Sea Corals Amendment \(press release\), June 11, 2015.](#)

<sup>38</sup> Fisheries Survival Fund and Northeast Seafood Coalition letter to President Obama, September 23, 2015.

<sup>39</sup> <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=399404>

<sup>40</sup> [Amendment 1, offered by Mrs. Radewagen, House Natural Resources Committee Full Committee Markup of H.R. 2406, October 7, 2015.](#)

of American Samoa was adopted that would ensure that the applicable fish and wildlife agency of each State and U.S. territory has a seat at the table when developing fisheries regulations in marine sanctuaries, monuments, or national parks in a state's or territory's waters.

To address these and other regional and national fisheries issues, Earlier this year the House passed H.R. 1335, the *Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act* (Young, R-AK).<sup>41</sup> H.R. 1335 includes federal fisheries management reforms that affect the Atlantic. Specifically, the bill increases transparency in the development of fishery science and the management decisions,<sup>42</sup> empowers regional management bodies by giving them flexibility under federal law to tailor management plans to regional needs,<sup>43</sup> increases state and local data use in federal fisheries management decisions,<sup>44</sup> and ensures consistency in federal fishery management by clarifying that the Magnuson-Stevens Act should govern federal fisheries even in areas such as marine sanctuaries and monuments.<sup>45</sup> Witnesses will discuss the need to update the Magnuson-Stevens Act at this hearing.

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<sup>41</sup> <http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=398439>

<sup>42</sup> [H.R. 1335, introduced by Congressman Don Young on March 4, 2015, Sec. 7](#)

<sup>43</sup> [Id at 42, Sec. 5](#)

<sup>44</sup> [Id at 42, Sec. 10](#)

<sup>45</sup> [Id at 42, Sec. 15](#)