

Subcommittee on Water, Power and Oceans
Doug Lamborn, Chairman
Hearing Memorandum

March 31, 2017

To: All Subcommittee on Water, Power and Oceans Members

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

Hearing: Legislative Hearing on **H.R. 1411 (Rep. Frank Pallone)** To continue in effect for the 2017 and 2018 fishing seasons certain fishing specifications for the summer flounder fishery, and for other purposes.
April 4, 2017 at 10:00 a.m. in 1324 Longworth HOB

H.R. 1411 (Rep. Frank Pallone, D-NJ), “Transparent Summer Flounder Quotas Act”

Bill Summary:

H.R. 1411 exempts the Atlantic summer flounder fishery from an updated regulation revising the 2017 and 2018 seasons and instead requires federal fishery managers to manage the fishery under the original regulation that set the 2017 and 2018 seasons.

Cosponsors: Rep. LoBiondo (R-NJ)

Invited Witnesses:

Mr. Robert Beal
Executive Director
Atlantic States Marine Fisheries Commission
Arlington, Virginia

Captain John McMurray
One More Cast Charters
Oceanside, New York

U.S. Department of Commerce
Washington, D.C.

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 (ASMFC). The National Oceanic and Atmospheric Administration (NOAA) manage fisheries in federal waters (3-200 miles from shore) through the applicable fishery management council (in this case the Mid-Atlantic Fishery Management Council).

A 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.¹ According to the ASMFC, fluke are “one of the most sought after commercial and recreational fish along the Atlantic coast,” with more than seventeen million pounds being harvested in 2014.² The ASMFC manages the fluke fishery in state waters while NOAA manages the fishery in federal waters.³



*Picture 1: Summer Flounder
Source: NOAA*

Under the current 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.⁴ While this split can cause some disagreement among the different user groups, the state-by-state allocations are more contentious in part because NOAA and the ASMFC use historical state landings data from 1998⁵ 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.⁶

Controversy over fluke fishing has increased due to new developments within the fishery. In 2013 and 2014, the ASMFC alleged that some fishermen abused the Mid-Atlantic Fishery Management Council’s Research Set-Aside program to illegally harvest fish.⁷ Subsequently, a 2015 stock assessment update for fluke found that the stock was being overfished – mostly attributed to below-average year classes from 2010-2013.⁸ The findings of the 2015 assessment

¹ <http://www.asmfc.org/species/summer-flounder>

² [Id at 2](#)

³ [Atlantic States Marine Fisheries Commission: Addendum XXVI to the Summer Flounder, Scup, Black Sea Bass Fishery Management Plan, February 2015](#)

⁴ [Id at 3](#)

⁵ [Atlantic States Marine Fisheries Commission: Addendum XXVIII to the Summer Flounder, Scup, Black Sea Bass Fishery Management Plan, February 2, 2017, Pg. 2, Table 1](#)

⁶ [Atlantic States Marine Fisheries Commission: Addendum XXVI to the Summer Flounder, Scup, Black Sea Bass Fishery Management Plan, February 2015](#)

⁷ <http://www.asmfc.org/species/summer-flounder>

⁸ [National Oceanic and Atmospheric Administration: Stock Assessment Update of Summer Flounder for 2015, August, 2015](#)

contrast with the last fluke assessment in 2013 that found that the stock was not overfished, and that overfishing was not occurring.⁹

As the 2015 assessment illustrated a significant decrease in the health of the stock, a 29 percent reduction in total fluke Allowable Biological Catch (ABC) – which is the maximum amount of fish that can be sustainably harvested, from which quotas are derived – was recommended for the 2016 fishing season.¹⁰ However, industry criticized this assessment and the resulting recommended reductions. 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.”¹¹ Ultimately, NOAA reduced the 2016 ABC by **29 percent** over the previous year.¹² The 2016 ABC resulted in a commercial quota of 8.12 million pounds, and a recreational harvest limit of 5.24 million pounds.¹³ The final rule that set the 2016 season also set the 2017 and 2018 seasons, with further declining ABCs of 15.86 and 15.68 million pounds, respectively.¹⁴

To determine if the ABCs set for 2016-2018 were still appropriate, NOAA’s Northeast Fishery Science Center conducted an updated stock assessment in 2016, which included 2015 commercial and recreational catch levels.¹⁵ Although recreational and commercial landings for 2015 were both below their annual quotas, the assessment determined that overfishing of the fluke fishery was occurring.¹⁶ Due to that determination, NOAA published a final rule in December 2016 revising the previously set 2017 and 2018 commercial and recreational ABCs.¹⁷ The revised ABCs resulted in additional reductions of approximately **30 percent for 2017** and **16 percent for 2018** in relation to the previously set ABCs for those years.¹⁸ Following those reductions, the ASMFC released its final fishery management plan for recreational fluke harvest in February 2017.¹⁹ These regulations required all states, with the exception of North Carolina, to increase the minimum size of a retained fish by one inch, but kept the possession limit of four fish per day.²⁰

⁹ [Mid-Atlantic Fishery Management Council fact sheet: Summer Flounder Catch and Landings Limits – 2016 Reductions, August, 2015](#)

¹⁰ [Id at 9](#)

¹¹ [Press of Atlantic City: 2016 flounder cuts could be reduced from 43 to 27 percent, August 2, 2015](#)

¹² [80 F.R. 80689, December 28, 2015, Table 1](#)

¹³ [Id at 12, Table 1](#)

¹⁴ [Id at 12, Table 1](#)

¹⁵ [Northeast Fisheries Science Center: Stock Assessment of Summer Flounder for 2016, pg 1](#)

¹⁶ [Id at 15, pg 1](#)

¹⁷ [81 F.R. 93842, December 22, 2016](#)

¹⁸ [Id at 17](#)

¹⁹ [Atlantic States Marine Fisheries Commission: Addendum XXVIII to the Summer Flounder, Scup, Black Sea Bass Fishery Management Plan, February 2, 2017](#)

²⁰ [Id at 19, table 5](#)

New Jersey's economy stands to take a significant hit under these reductions as, historically, the state has accounted for nearly 40 percent of landings among states.²¹ As such, state officials and the New Jersey congressional delegation have been vocal against NOAA and the ASMFC implementing these cuts. New Jersey's Department of Environmental Commissioner Bob Martin has called the cuts an "attack on our economy, it's an attack on our way of life."²² However, others do not question the underlying stock assessment science but believe that the outcome may not be favorable.²³

H.R. 1411 aims to reverse these cuts by exempting the fishery from the regulation revising the 2017 and 2018 quotas and instead requires that NOAA and the ASMFC manage the fishery under the original 2017 and 2018 quotas. Under the bill, this exemption would remain in effect until federal fishery managers conduct a new stock assessment and publish a new rule in the Federal Register to set new seasons.²⁴

Major Provisions/Analysis of H.R. 1411:

Section 2 exempts the summer flounder fishery from the 2017 fishery regulations (81 FR 93842) the fishery from the regulation revising the 2017 and 2018 quotas and instead requires that NOAA and the ASMFC manage the fishery under the original 2017 and 2018 quotas. Under this section, this exemption would remain in effect until NOAA has completed a new stock assessment and published a rule in the Federal Register to set new seasons.

Cost:

The Congressional Budget Office has not completed a cost estimate of this bill at this time.

Administration Position:

Unknown.

Effect on Current Law (Ramseyer):

Not applicable.

²¹ [Atlantic States Marine Fisheries Commission: Addendum XXVIII to the Summer Flounder, Scup, Black Sea Bass Fishery Management Plan, February 2, 2017, Pg. 2, Table 1](#)

²² [Asbury Park Press: New Jersey Rallies Against Flounder Harvest Cuts, January 27, 2017](#)

²³ [Id at 22](#)

²⁴ [H.R. 1411, the Transparent Summer Flounder Quotas Act, introduced by Frank Pallone, Jr., March 7, 2017, Sec. 2](#)