

**TESTIMONY OF**

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**Testimony before the Committee on Natural Resources  
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs  
United States House of Representatives**

**Legislative Hearing on H.R. 1411 – the Transparent Summer Flounder Quotas Act  
Rep. Frank Pallone, Jr.**

**April 4, 2017**

Chairman Lamborn and Members of Subcommittee on Water, Power and Oceans:

The Atlantic States Marine Fisheries Commission (Commission) is a management entity comprised of the 15 Atlantic coast states. The Commission provides a forum for interstate cooperation on marine fisheries that cross state borders and thus cannot be adequately managed by a single state. Congress authorized the Commission in 1942, and granted us management authority over Atlantic striped bass in 1984 through the Atlantic Striped Bass Conservation Act. Congress then expanded our management authority to include all Commission fishery management plans (FMPs) with the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) in 1993. The Commission currently manages 27 species of fish and shellfish through its various FMPs.

**Introduction**

Summer flounder is among the nation's most popular recreational fisheries. It is also the source of livelihood for thousands more on commercial and charter boats, shore-side businesses and for the coastal tourism industry. On the Atlantic coast, you are as likely to find fluke on the menu of a five star restaurant as you are along the many boardwalks dotting the coast. Management decisions surrounding the commercial and recreational fisheries are seldom easy, and summer flounder exemplifies the balancing act between preserving the resource for future generations and the very real economic and social needs of industry today.

Summer flounder management is as complex as it gets. Authority over the fishery is shared by the Commission, the Mid-Atlantic Fishery Management Council (MAFMC) and NOAA Fisheries. Two of the nation's most important fisheries statutes – the Atlantic Coastal Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA or MSA) – govern the fishery. These sometimes disparate laws have long challenged managers but often result in compromise that maximizes the benefits of our finite marine resources.

**Status of the stock**

Summer flounder is one of the most frequently assessed species along the Atlantic coast. The last benchmark stock assessment for summer flounder was approved in 2013. Since then, stock assessment updates were completed in 2015 and 2016. The next benchmark stock assessment is tentatively scheduled to be completed in 2018.

The 2016 stock assessment update indicates the summer flounder stock is experiencing overfishing, with the estimated fishing mortality rate in 2015 exceeding its threshold by 26%. The 2015 estimate of spawning stock biomass (SSB) is at 58% of the target and 16% above the threshold; this is the second consecutive year the stock assessment update has indicated a decline in SSB. If this trend continues and the SSB estimate falls below the threshold, the resource will be classified as overfished. The decrease in SSB appears to be driven largely by below-average recruitment, in addition to overfishing. The 2016 assessment update indicates the stock has experienced six years of below average year classes from 2010 to 2015. The 2016 findings, as well as those of the 2013 benchmark stock assessment and 2015 update, are supported by the Commission's Summer Flounder Technical Committee as the best available science.

Stock assessments use commercial and recreational landings data (fishery-dependent information) as well as research surveys (fishery-independent information) to characterize local and regional levels of abundance. For summer flounder, research surveys from seven states (Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, and Virginia) and two regional surveys (NEFSC and NEAMAP) provide information on juvenile and adult abundance. Many of these surveys are conducted in the spring and the fall each year to provide indices of seasonal abundance. For the 2016 stock assessment update, 14 of the 15 survey indices indicated a decline in abundance from their most recent peak levels, which generally occurred between 2009 and 2012. The percent decrease or increase for each research survey is listed below:

- NOAA Fisheries Northeast Fisheries Science Center (NEFSC) Spring -59%; Fall -59%
- Massachusetts Division of Marine Fisheries Spring +79%; Fall +38%
- Rhode Island Division of Fish and Wildlife (RI DFW) Fall -33%; Monthly -72%;  
University of Rhode Island Graduate School of Oceanography -58%
- Connecticut Department of Energy and Environmental Protection Spring -57%; Fall -46%
- New York State Department of Environmental Conservation -44%
- New Jersey Division of Fish and Wildlife -64%
- Delaware Division of Fish and Wildlife -22%
- Virginia Institute of Marine Sciences ChesMMAP -98%
- Northeast Area Monitoring and Assessment Program (NEAMAP) Spring -54%; Fall -75%

### **Management**

Summer flounder fisheries occur in both state waters (0-3 miles offshore) and federal waters (3-200 miles offshore, also known as the Exclusive Economic Zone). The Commission manages summer flounder jointly with the MAFMC and NOAA Fisheries. There are significant commercial and recreational summer flounder fisheries in both state and federal waters and they are primarily managed through catch and landings limits. As a jointly managed species, the Commission is, by default, constrained by the provisions of MSA including ending overfishing immediately and the specification of a coastwide acceptable biological catch (ABC). The ABC for summer flounder is divided into the commercial and recreational annual catch limits (ACLs) which are adjusted to account for projected discards, to establish the commercial quota and recreational harvest limit (RHL). The allocation to the commercial sector (60%) and the recreational sector (40%) of the ABC is based on historical catch data as prescribed in the FMP. The ABC is set based the MAFMC's Scientific and Statistical Subcommittee (SSC) recommendation, which takes into account an evaluation of the stock assessment results and any uncertainty (biological, management, etc.) not included in the stock assessment. The MAFMC's SSC makes a recommendation

of the ABC and the MAFMC, as bound by MSA, cannot specify catch limits in excess of the SSC's recommendation. By default, the Commission is also bound by the SSC's recommendation. Annually, the Commission and MAFMC meet to review the SSC's recommendation and establish single or multi-year catch limits. For the commercial fishery, gear restrictions and size limit specifications can be altered annually. For the recreational fishery, recreational data are evaluated to determine coastwide fishery performance relative to the RHL and determine what adjustments to management measures (size limits, possession limits, and season lengths) may be needed to achieve the RHL for the following year. Further, the joint Commission/MAFMC FMP requires that a coastwide set of management measures be specified annually to constrain harvest to the RHL. More than 15 years ago, it became clear to the Commission and MAFMC that a coastwide set of measures or 'one size fits all' approach did not work well in meeting the states' needs and regional differences in the fish size and distribution. Since moving away from coastwide measures, the Commission and MAFMC have operated under a policy of 'conservation equivalency' which annually specifies management measures to constrain harvest to the RHL. Conservation equivalency allows the states, through the Commission, the ability to craft management measures to meet the needs of their state's or region's recreational summer flounder fishery and to apply consistent regulations in both state and federal waters. Beginning in 2014, the Commission has employed regional management for the recreational fishery. Under this approach, states form into regions that have the same management measures. Collectively, these regional management measures are designed to constrain the combined regional harvest levels to the RHL, as well as ensure consistency in regulations between neighboring states.

As part of this annual specification process, the Commission and MAFMC must also specify back up management measures in case a state, region, or the collective states do not set management measures that constrain harvest to the RHL. Should NOAA Fisheries determine that conservation equivalency measures specified through the Commission process are at risk of exceeding the RHL, it may implement "precautionary default" or more restrictive measures to constrain the fishery.

### **Precautionary Default Measures**

Precautionary default measures are defined as measures that would achieve at least the overall required reduction in landings for each state. They serve as worst-case scenario specifications should NOAA Fisheries determine management measures approved under conservation equivalency do not meet the requirements set forth in the MSA to constrain harvest to the coastwide RHL. The precautionary default measures for summer flounder in 2017 would be a two fish bag limit, a minimum size of 20 inches, and a 62 day season (July 1-August 31). If implemented, federal permit holders would be bound by the precautionary default measures, even while fishing in state waters. If a state does not implement a suite of measures approved by the Commission as 'conservationally equivalent,' the state would be obligated to implement the precautionary default measures.

### **2017 Fishery Specifications**

The Commission and MAFMC met in August 2016 to consider the SSC's review of the 2016 stock assessment update and set specifications for the 2017 and 2018 fisheries. Based on the stock assessment results and SSC's recommendation, the Commission and MAFMC approved catch limits for both the commercial and recreational sectors that constituted an approximate 30% reduction in harvest for 2017 compared to 2016 catch limits. These reductions were taken to address the declining status of the stock and to end overfishing.

### Commercial Specifications

The 2017 commercial quota was reduced by 30% to account for reduced stock levels; this quota is then allocated on a state-by-state basis. In general, after the ABC and subsequent coastwide commercial quota has been approved by the Commission and MAFMC, NOAA Fisheries determines if any further adjustments are needed due to harvest overages or excessive discards. The available commercial quota is divided among the states in fixed percentages based on historical commercial landings. Each state then independently determines the best set of management measures to constrain state landings to its state quota.

### Recreational Specifications

For the recreational fishery, the 2017 RHL of 3.77 million pounds, an all-time low, is an approximate 30% reduction in harvest from 2016 limit. The 2017 RHL is approximately 48% less than 2015 and 68% less than 2011, when it peaked at 11.68 million pounds. In order to not exceed the reduced 2017 RHL, a 41% reduction, relative to the 2016 preliminary harvest estimates, is needed. To achieve the needed reduction, the Commission recognized it had to make a difficult decision for the 2017 recreational fishery. In an attempt to equitably spread the impact of the reduction along the coast, it required states maintain 2016 season lengths, increase the minimum size limit by 1" (with the exception of NC) and reduce possession limits to no more than 4 fish (with the understanding that some states may have to go to 3 fish). It is projected the percent decrease in recreational harvest from 2016-2017 is similar across all the states.

The Commission's decision took into account the findings of the 2015 and 2016 stock assessment updates and the need to reduce the current fishing mortality to below the threshold to prevent overfishing. When considering final action on Draft Addendum XXVIII, the Commission also took into consideration the uncertainty of preliminary harvest estimates from NOAA Fisheries' Marine Recreational Information Program (MRIP). In particular, there was the recognition that the confidence intervals around the MRIP harvest estimates limit our ability to precisely project the impacts of differing management measures. A comparison of 2016 and 2017 management measures is included below:

State	Minimum Size/Possession Limit/Open Season	
	2016	2017
Massachusetts	16"/5 fish/ May 22-September 23	17"/4 fish/ May 22-September 23
Rhode Island	18"/8 fish/ May 1-December 31	19"/4 fish/ May 1-December 31
Connecticut	18"/5 fish/May 17- September 21	19"/3 fish/ May 17- September 21
CT Shore Program (46 designed shore sites)	16"/5 fish/May 17- September 21	
New York	18"/5 fish/May 17- September 21	19"/3 fish/ May 17- September 21
New Jersey*	18"/5 fish/May 21- September 25	19"/3 fish/May 21- September 25
NJ Shore program (1 designated site)	16"/2 fish/May 21- September 25	
New Jersey/Delaware Bay COLREGS**	17"/4 fish/May 21- September 25	18"/3 fish/ May 21- September 25
Delaware	16"/4 fish/January 1- December 31	17"/4 fish/January 1- December 31
Maryland	16"/4 fish/January 1- December 31	
Potomac River Fisheries Commission	16"/4 fish/January 1- December 31	17"/4 fish/January 1- December 31
Virginia	16"/4 fish/January 1- December 31	17"/4 fish/January 1- December 31
North Carolina	15"/6 fish/January 1- December 31	15"/4 fish/January 1- December 31

\*New Jersey east of the COLREGS line at Cape May has management measures consistent with the northern region of Connecticut – New York.

\*\*New Jersey west of the COLREGS line at Cape May, NJ inside Delaware Bay has a similar size limit to the southern region (DE-VA), the same possession limit as the southern region (DE-VA), and the same season length as the northern region of Connecticut – New York.

#### Next Benchmark Stock Assessment

The timing of the next benchmark stock assessment has not been finalized. However, the Commission, MAFMC and NOAA Fisheries NEFSC are currently developing a schedule that would include completion of the benchmark in 2018 for use in the development of 2019 specifications. This benchmark will explore the use of emerging sex-specific modeling approaches to investigate differences in abundance by sex for the population. In 2017, there have been meetings between New Jersey stakeholders and fishery managers from the Commission, MAFMC, and NEFSC to determine what information is needed to complete the new stock assessment modeling approach. Given the complexities of incorporating a new modeling approach, the time constraints on stock assessment scientists, and the already full assessment schedule, there are considerable challenges to completing a new stock assessment for summer flounder sooner. In addition, in 2018 MRIP is scheduled to release updated harvest estimates for previous years based on improvements made to the survey. The updated data have the potential to significantly change estimated harvests and will likely require a benchmark assessment to respond to the change in harvest.

#### Risk of Not Taking Action in 2017

H.R. 1411 considers maintaining the 2016 regulations to manage the 2017 fishery. This approach carries an inherent risk of further reducing the summer flounder population and, ultimately, fishing

opportunities in future years. As noted earlier, the summer flounder population is experiencing overfishing and the 30% reduction approved by the Commission and MAFMC is needed to reduce fishing mortality to the threshold rate. Also, multiple fishery-independent surveys corroborate similar findings, showing a steady and significant decline in abundance in recent years. This coupled with the fact that SSB is just 16% above its threshold, provides ample evidence to conclude continued stock decline would occur under H.R. 1411. If SSB declines below the threshold, an MSA-mandated rebuilding timeline will be triggered. This rebuilding timeline would likely result in even greater restrictions and reduced fishing opportunities in future years.

### **Single Species Management**

Marine fisheries management decisions on the Atlantic coast are among the most complex in the world due to increasingly sophisticated stock assessment methodology, multiple competing interests, and numerous overlapping state and federal statutes. Although cumbersome, the Commission and federal management processes provide all stakeholders with multiple opportunities for input. They also provide state and federal scientists the best chance to analyze and assess the effects of management actions.

For these reasons, fishery management decisions are best made through the processes already approved by Congress and laid out in the Atlantic Coastal Act and MSA.

### **Recreational Harvest Estimates**

Summer flounder is one of the most popular recreational fisheries in the Mid-Atlantic region. As with all major recreational fisheries, obtaining reliable harvest data has challenged managers for as long as the data have been collected. Angler success rate is highly variable from year to year, making regulatory stability a unique challenge. Summer flounder is well sampled by MRIP compared to other important recreational species, but variability in the data and using the data to predict future harvest and develop management measures around predicted harvest, is difficult. The recent efforts to move towards regional management measures has sought to improve the resolution of the data used to base management decisions on; but this approach still faces challenges given the dynamic nature of recreational fishing interests and anglers from year to year.