

In the Supreme Court of the United States

**DELMARVA FISHERIES ASSN., INC.,
MARYLAND CHARTER BOAT ASSN., INC.,
BRIAN NESSPOR; AND, KENNETH
JEFFRIES, JR.,**

Applicants

v.

**ATLANTIC STATES MARINE
FISHERIES COMMISSION,**

Respondent

To the Honorable John G. Roberts, Jr., Chief Justice of the United States
and Circuit Justice for the Fourth Circuit

**PETITIONERS' EMERGENCY APPLICATION FOR
A WRIT OF INJUNCTION FOR INTERIM RELIEF**

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Exhibit A

District Court Letter Order on Motion for Preliminary Injunction

CHAMBERS OF
RICHARD D. BENNETT
UNITED STATES DISTRICT JUDGE
NORTHERN DIVISION

U.S. COURTHOUSE - CHAMBERS 5D
101 W. LOMBARD STREET
BALTIMORE, MD 21201
TEL: 410-962-3190
FAX: 410-962-3177

April 12, 2024

LETTER ORDER

To Counsel of Record: *Delmarva Fisheries Association, Inc. et al v. Atlantic States Marine Fisheries Commission* (No. RDB-24-0688)

Dear Counsel:

This letter order follows this Court's ruling from the bench on Plaintiffs' Motion for Preliminary Injunction. (ECF No. 8.) For the reasons set forth on the record and those to follow in a Memorandum Opinion to come shortly, Plaintiffs' Motion for Preliminary Injunction (ECF No. 8) is DENIED. As to scheduling matters, Defendant shall file its Motion to Dismiss by Friday, April 19, 2024, and Plaintiffs shall file any Response thereto by Friday, April 26, 2024.

Notwithstanding the informal nature of this letter, it is an Order of this Court and the Clerk is directed to docket it as such.

Sincerely,

/s/

Richard D. Bennett
United States Senior District Judge

Exhibit B

Applicants Letter to Maryland Governor Attorney General

*Maryland Charter Boat
Association, Inc.*



April 15, 2024

The Honorable Wes Moore
Governor
State of Maryland
100 State Circle
Annapolis, Maryland

The Honorable Anthony Brown
Attorney General
State of Maryland
200 St. Paul Place
Baltimore, MD 21202

RE: Striped Bass Fishing Regulations

Dear Governor Moore and Attorney General Brown:

On January 24, 2024, the Atlantic States Marine and Fisheries Commission announced sweeping new regulatory limitations on commercial and recreational fishing for its member states including Maryland. The Maryland delegation voted in opposition to the Plan put forward by this Interstate Compact and we greatly appreciated the State governmental leadership taking this stand. Mr. Michael Luisi, Maryland's designee to the Commission told them that the measure "will put people out of business" in our state but they didn't seem to care and simply outvoted Maryland.

On Feb. 8, 2024, Delmarva Fisheries Association and the Maryland Charter Boat Association, on behalf of their 500 members filed suit in Federal court in Baltimore and moved shortly after that for a Preliminary Injunction. At that time, we estimated that business revenues would drop 50 percent due to the Plan limitation on one fish per day to recreational users including those using "for hire" charter boats. Several individual Eastern Shore counties and the entire Maryland Association of Counties wrote in opposition to the Plan's economic impact on related fishing-related businesses (and tax dollars) across the state.

On Feb. 12, 2024, the Federal Court in Baltimore denied that request even though we presented evidence that the business fall off was 75 percent or more, e.g., 62 charter reservations this time last year versus 16 at the

present time due to massive cancellations. The Hon. Richard D. Bennett, presiding, agreed that we had demonstrated irreparable harm having already occurred but ruled that we had no private right to sue. He repeatedly said that under this Interstate Compact system, it was necessary for the Attorney General to request a stay in the regulation pending a decision on the merits. Our attorneys strongly disagreed with this conclusion but that is where we stand.

By this letter, we are earnestly requesting the assistance of the State and the intervention by the Office of the Attorney General on our behalf. Judge Bennett mentioned this step numerous times during the proceeding and there was little question in our mind that he fully appreciated the financial difficulties for all of us that are involved in this industry. Please help us take this procedural step that he deems necessary to protect our businesses over the course of the 2024 fishing season so that can still be here to pursue the full case later in the year.

Since COVID, many families rely on Striped Bass fishing, especially in the Chesapeake Bay is for subsistence purposes that can no longer be fairly termed "recreational." We have over 800 people from six other states along the Atlantic coast that are supporting our efforts on this matter, and the number grows daily.

Thank you for taking our emergency request under consideration.

Respectfully yours,

Rob Newberry

Captain Rob Newberry

Chairman

Delmarva Fisheries Association, Inc.

rnewberry56@gmail.com

410.708.9851

Brian Hardman

Captain Brian Hardman

President

Maryland Charter Boat Association

leaddog@rockfishing.com

301.704.4246

Exhibit C

Letter of Maryland Governor Attorney General to Applicants

From: **Shara Alpert -DNR-** < alpert >
Date: Tue, May 14, 2024, 12:22 PM
Subject: Delmarva Fisheries Association, et. al. v. Atlantic States Marine Fisheries Commission
To: < >, < >

Dear Captains Newberry and Hardman,

On behalf of Attorney General Brown, I am writing in response to your letter regarding the matter of *Delmarva Fisheries Association, et. al. v. Atlantic States Marine Fisheries Commission* currently pending before the U.S. District Court of Maryland. You have requested that the Governor's Office and the Office of the Attorney General request a stay in the Department of Natural Resources' ("DNR") regulations implementing Addendum II of the Atlantic States Marine Fisheries Commission (ASMFC) Striped Bass Fishery Management Plan, pending the outcome of this case. For the reasons that follow, the Office of the Attorney General has determined that it does not have a role in the litigation, particularly given that the State is not a party to the litigation, and it would neither be appropriate, nor in the State's best interest, for our Office to pursue a stay.

Preliminarily, in reviewing Judge Bennett's April 22, 2024 Memorandum Opinion Denying the Plaintiffs' Motion for Preliminary Injunction, we are unable to find support for your claim that Judge Bennett's ruling reflects a recommendation that the Office of the Attorney General request a stay in DNR's regulations. Rather, the ruling recognizes that while the State of Maryland is authorized to sue ASMFC to prevent enforcement of the Addendum, the State has elected not to do so, and the Plaintiffs in this matter are unlikely to succeed on the merits because of lack of Article III standing, and because the Plaintiffs lack meritorious legal claims.

Please be aware that under the Atlantic Striped Bass Conservation Act, 16 U.S.C. § 5151, et. seq., and the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. § 5101, et. seq., if ASMFC finds that a State fails to comply with ASMFC's Interstate Fishery Management Plan for Atlantic Striped Bass, or any amendment or addendum under the Plan, the Secretaries of the Department of Commerce and the Department of the Interior may impose a federal moratorium on *all* striped bass fishing in that State. A stay of DNR's regulations would likely result in the State of Maryland falling out of compliance with Addendum II of the Interstate Fishery Management Plan for Atlantic Striped Bass. If ASMFC finds that Maryland is not complying with the Striped Bass Fishery Management Plan, the Secretaries could place a federal moratorium on all striped bass fishing in the State. Consequently, a stay on DNR's regulations would likely result in substantial financial harm to the Maryland charter boat industry, recreational striped bass fishery, commercial striped bass fishery, and Maryland's coastal communities.

Based on the aforementioned considerations, our Office declines to take any action that would impede DNR's implementation of the striped bass regulations, in accordance with the mandate of ASMFC.

Sincerely,
Shara Mervis Alpert
Principal Counsel
Office of the Attorney General
Department of Natural Resources

C4

Annapolis, MD 21401
410-260-8358

Exhibit D

District Court Opinion Denying Motion for Preliminary Injunction

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DELMARVA FISHERIES *
ASSOCIATION, INC., *et al.*, *

Plaintiffs, *

v. *

Civil Action No. RDB-24-0688

ATLANTIC STATES MARINE *
FISHERIES COMMISSION, *

Defendants. *

* * * * *

MEMORANDUM OPINION

Plaintiffs Delmarva Fisheries Association, Inc., Maryland Charter Boat Association, Inc., Brian Nesspor, and Kenneth Jeffries, Jr. bring this constitutional challenge to the January 23, 2024 Addendum II to Amendment 7 to the Interstate Fishery Management Plan for Atlantic Striped Bass¹ by Defendant Atlantic States Marine Fisheries Commission. Plaintiffs have moved for a Preliminary Injunction preventing enforcement of the Addendum, which they allege will have drastic limitations on commercial and recreational fishing for Atlantic Striped Bass in the Chesapeake Bay and Atlantic Ocean. Among other things, the Addendum reduces the daily fishing outtake of Striped Bass for recreational fishers from two to one. The new rules are scheduled to take effect on May 1, 2024. The parties’ submissions have been reviewed, and a hearing was held on April 12, 2024. For the reasons set forth on the record and those set forth below, Plaintiffs’ Motion for Preliminary Injunction (ECF No. 2) was

¹ Also known as “rockfish.”

DENIED. (ECF No. 17.)

BACKGROUND

Plaintiff Delmarva Fisheries Association, Inc., located in Chestertown, Maryland, is a 501(c)(6)² fisheries trade association established to protect, defend, and enhance the commercial fishing industry in the Delmarva³ region of the United States. (ECF No. 1 ¶ 13.) Plaintiff Maryland Charter Boats Association, Inc., located in Conowingo, Maryland, comprises approximately 400 “for hire” vessels—primarily medium-sized, family-run boats—employing around 1,500 operators and crew in the Chesapeake Bay. (*Id.* ¶ 14.) Plaintiff Brian Nesspor is a commercial fisherman residing in Rock Hall, Maryland with a Striped Bass fishing business in the Chesapeake Bay. (*Id.* ¶ 15.) Plaintiff Kenneth Jeffries, Jr. is a commercial fisherman residing in Severna Park, Maryland with a “for hire” Charter Boat fishing business for Striped Bass on the Chesapeake Bay. (*Id.* ¶ 16.)

Defendant Atlantic States Marine Fisheries Commission is a consortium of state governmental entities headquartered in Arlington, Virginia. (*Id.* ¶ 17.) The Commission is an Interstate Compact authorized by the U.S. Congress comprising fifteen member states: Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida. Pub. L. No. 77-539, 56 Stat. 267 (1942). The Commission’s purpose is to “promote the better utilization of the fisheries, marine, shell and anadromous, of the Atlantic seaboard

² The following organizations are tax exempt: “[b]usiness leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players), not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.” 26 U.S.C. § 501(c)(6).

³ The Delaware, Maryland, and Virginia peninsula.

by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause.” *Id.* In 1981, the Commission issued its *Interstate Fisheries Management Plan for Atlantic Striped Bass of the Atlantic Coast from Maine through North Carolina*, which identified management measures to perpetuate striped bass. (ECF No. 13 at 16.)⁴ The Plan has undergone several amendments, and the currently effective plan is set forth in Amendment 7, issued in 2022. (*Id.*) That Amendment has since been modified by two addenda, the most recent of which is Addendum II, which was finalized in January 2024. (*Id.*) Among other things, Addendum II reduces the commercial quota for striped bass by 7% and reduces the bag limit for charter boat fishing from two fish to one. (*Id.* at 18.)

On March 7, 2024, Plaintiffs filed this lawsuit against the Commission. (ECF No. 1.) They bring three counts alleging violation of due process under the 5th and 14th Amendments of the United States Constitution (Count I), 42 U.S.C. § 1983 (Count II), and Article 19 of the Maryland Constitution (Count III). On March 22, 2024, they moved for a preliminary injunction preventing the enforcement of Addendum II. (ECF No. 8.) This Court held a hearing on April 12, 2024 and for the reasons set forth on the record DENIED the motion. (ECF No. 17.)

STANDARD OF REVIEW

“The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.” *United States v. South Carolina*, 720 F.3d 518,

⁴ For clarity, this Memorandum Opinion cites to the ECF generated page number, rather than the page number at the bottom of the parties’ various submissions, unless otherwise indicated.

524 (4th Cir. 2013) (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981)). A preliminary injunction is an “extraordinary remed[y] involving the exercise of very far-reaching power to be granted only sparingly and in limited circumstances.” *MicroStrategy Inc. v. Motorola, Inc.*, 245 F.3d 335, 339 (4th Cir. 2001) (quoting *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 816 (4th Cir. 1992)). To determine whether to issue a preliminary injunction, this Court follows the test set forth by the United States Supreme Court in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008), which requires a showing that: (1) the movant is likely to succeed on the merits; (2) the movant is likely to suffer irreparable harm absent preliminary relief; (3) the balance of equities favors the movant; and (4) an injunction is in the public interest. 555 U.S. at 20; accord *Roe v. Dep’t of Def.*, 947 F.3d 207, 219 (4th Cir. 2020); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014). A court cannot issue a preliminary injunction absent a “clear showing” that all four requirements are satisfied. *Leaders of a Beautiful Struggle v. Balt. Police Dep’t*, 979 F.3d 219, 226 (4th Cir. 2020), *rev’d on other grounds*, 2 F.4th 330 (4th Cir. 2021) (en banc); accord *Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013). The plaintiff “bears the burden of establishing that each of these factors supports granting the injunction.” *Direx*, 952 F.2d at 812 (citing *Technical Publ’g Co. v. Lebbhar-Friedman, Inc.*, 729 F.2d 1136, 1139 (7th Cir. 1984); *Shaffer v. Globe Protection, Inc.*, 721 F.2d 1121, 1123 (7th Cir. 1983)). Thus, a court need not address all four *Winter* factors if one or more factors is not satisfied. *Henderson ex rel. NLRB v. Bluefield Hosp. Co., LLC*, 902 F.3d 432, 439 (4th Cir. 2018).

ANALYSIS

To determine whether a preliminary injunction is appropriate, this Court follows the test set forth by the Supreme Court in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S.

7 (2008), which requires a showing that:

- (1) the movant is likely to succeed on the merits;
- (2) the movant is likely to suffer irreparable harm absent preliminary relief;
- (3) the balance of equities favors the movant; and
- (4) an injunction is in the public interest.

555 U.S. at 20. Plaintiffs contend that they are entitled to a preliminary injunction enjoining Addendum II. The Commission argues that Plaintiffs cannot satisfy any of the four factors, although both parties' arguments are chiefly focused on the first factor: whether Plaintiffs are likely to succeed on the merits.

As a preliminary matter, it is unclear whether Plaintiffs have Article III standing to sue in this case. “[T]o possess standing to sue under Article III of the Constitution, the Plaintiffs were obliged to sufficiently allege three elements: (1) they suffered an injury-in-fact that was concrete and particularized and either actual or imminent; (2) there was a causal connection between the injury and the defendant’s conduct (i.e. traceability); and (3) the injury was likely to be redressable by a favorable judicial decision.” *Hutton v. Nat’l Bd. of Exam’rs in Optometry, Inc.*, 892 F.3d 613, 618–19 (4th Cir. 2018) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992)). The burden of sufficiently establishing these three elements falls on the party invoking federal jurisdiction. *Lujan*, 504 U.S. at 561; *Hutton*, 892 F.3d at 619.

Plaintiffs’ alleged injury does not appear to be redressable by a favorable decision in this case. The Commission does not directly regulate Plaintiffs. Rather, the Commission promulgates plans setting out fishery management measures, which are then implemented by the respective member states. Even if this Court were to enjoin Addendum II, Maryland would be under no obligation to rescind the regulations it has adopted in conformity with Addendum II. This is particularly noteworthy because Maryland declined to appeal the Commission’s vote

in favor of Addendum II.⁵ Moreover, even though the State of Maryland is authorized to sue the Commission to prevent enforcement of the addendum, it has not elected to do so.⁶ It is therefore unlikely that enjoining the addendum will have any impact on Maryland's decision to enact regulations in conformity with the addendum. Accordingly, Plaintiffs cannot demonstrate that they are likely to succeed on the merits due to the issue of standing.

Even if Plaintiffs have standing to sue, they are still unlikely to succeed on the merits of their claims. Plaintiffs do not plausibly state a takings claim or deprivation of any other federal constitutional right, as Addendum II does not physically appropriate Plaintiffs' property, nor does it regulate their fishing vessels or gear. The posture of the addendum and the unique structure of the Commission preclude a finding that addendum constitutes a regulatory taking. Addendum II was issued after a thorough deliberative process in which the State of Maryland participated, and Plaintiffs had notice and opportunity to comment on its measures. Because the addendum is not subject to review under the Administrative Procedure Act, 5 U.S.C. § 702, Plaintiffs' allegations as to the addendum being arbitrary and capricious are inapposite. *See New York v. Atl. States Marine Fisheries Comm'n*, 609 F.3d 524, 527 (2d Cir. 2010). Neither does Section 1983 provide an avenue for Plaintiffs to challenge the addendum, as the Commission is not a "person" within the meaning of the statute, it does not act under

⁵ "Any state that is aggrieved by an action of the management board action may appeal that action to the [Interstate Fisheries Management Program] Policy Board . . ." Atlantic State Marine Fisheries Commission, Interstate Fisheries Management Program Charter § 4(h).

⁶ "Each state is obligated to carry out the terms of the ASMFC Compact, and member states may seek judicial relief to enforce rights under the agreement." *New York v. Atl. States Marine Fisheries Comm'n*, 609 F.3d 524, 536 (2d Cir. 2010). *See also Texas v. New Mexico*, 462 U.S. 554, 569–70 (1983) ("In the absence of an explicit provision or other clear indications that a bargain to that effect was made, we shall not construe a compact to preclude a State from seeking judicial relief when the compact does not provide an equivalent method of vindicating the State's rights.").

“color of state law,” and Congress did not intend to create a private remedy authorizing private parties to bring federal court actions challenging the Commission’s fishery planning decisions.

Plaintiffs must satisfy all four factors of the *Winter* test to warrant the extraordinary remedy of a preliminary injunction. *Miranda v. Garland*, 34 F.4th 338, 358 (4th Cir. 2022) (quoting *Winter*, 555 U.S. at 20). Courts cannot issue a preliminary injunction absent a “clear showing” that all four requirements are satisfied. *Leaders of a Beautiful Struggle v. Balt. Police Dep’t*, 979 F.3d 219, 226 (4th Cir. 2020), *rev’d on other grounds*, 2 F.4th 330 (4th Cir. 2021) (en banc). Thus, a court need not address all four *Winter* factors if one or more factors is not satisfied. *Henderson ex rel. NLRB v. Bluefield Hosp. Co., LLC*, 902 F.3d 432, 439 (4th Cir. 2018). As Plaintiffs have failed to satisfy their burden on likelihood of success on the merits, this Court need not address the remaining three parts of the preliminary injunction test.

CONCLUSION

For the reasons stated above, and in accordance with this Court’s decision from the bench on April 12, 2024 (ECF No. 18) and Order dated April 12, 2024 (ECF No. 17), Plaintiffs’ Motion for Preliminary Injunction (ECF No. 8) has been DENIED.

The Clerk of Court shall file this Memorandum Opinion electronically and notify all counsel of record accordingly.

Dated: April 22, 2024

/s/
Richard D. Bennett
United States Senior District Judge

Exhibit E

Supreme Court Letter of Return

**SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001**

May 21, 2024

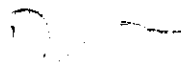
James Butera
Meeks, Butera, and Israel PLLC
2020 Pennsylvania Ave NW
Washington, DC 20006

RE: Delmarva Fisheries Assn, Inc, et al. v. ASMF Commision
CA4 24-1388

Dear Mr. Butera:

As discussed on the phone, enclosed is your application for writ of injunction returned for failure to comply with Rule 23.3, which requires you to first seek relief in the appropriate lower court (here the Fourth Circuit).

Please feel free to contact me if you have any questions.

Sincerely,
Scott S. Harris, Clerk
By: 

Robert Meek
(202) 479-3027

Enclosures

Exhibit F

Circuit Court Opinion Dismissing the Case

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1388

DELMARVA FISHERIES ASSOCIATION, INC.; MARYLAND CHARTER BOAT
ASSOCIATION, INC.; BRIAN NESSPOR; KENNETH JEFFRIES, JR.,

Plaintiffs – Appellants,

v.

ATLANTIC STATES MARINE FISHERIES COMMISSION,

Defendant – Appellee.

Appeal from the United States District Court for the District of Maryland, at Baltimore.
Richard D. Bennett, Senior District Judge. (1:24-cv-00688-RDB)

Argued: December 11, 2024

Decided: February 4, 2025

Before WYNN and THACKER, Circuit Judges, and FLOYD, Senior Circuit Judge.

Vacated and remanded with instructions by published opinion. Judge Wynn wrote the
opinion, in which Judge Thacker and Senior Judge Floyd joined.

ARGUED: James J. Butera, MEEKS, BUTERA & ISRAEL PLLC, Washington, D.C.,
for Appellants. Sean H. Donahue, DONAHUE, GOLDBERG & HERZOG, Washington,
D.C., for Appellee. **ON BRIEF:** Andrew C. Meehan, MACLEOD LAW GROUP, LLC,
Chestertown, Maryland, for Appellants. Keri S. Davidson, DONAHUE, GOLDBERG &
HERZOG, Washington, D.C., for Appellee.

WYNN, Circuit Judge:

Plaintiffs, a group of charter-boat operators and trade associations operating in Maryland, sued the Atlantic States Marine Fisheries Commission in federal district court to enjoin the Commission's striped-bass plan. The Commission, which was formed in 1942 pursuant to an interstate compact, recommends fishery management plans to its member states. The court denied Plaintiffs' motion for a preliminary injunction in part because it found that Plaintiffs likely lacked standing to enjoin the plan.

We conclude that Plaintiffs lack standing because they are regulated by Maryland, not by the Commission, and Plaintiffs made no allegation that enjoining the Commission's recommended plan would likely cause Maryland to rescind its own regulations. And even if they had, they would have needed to bolster that allegation with specific reasons supporting it, as Maryland adopted stricter measures than the plan called for.

Because Plaintiffs lack standing to pursue an injunction of the striped-bass plan—which is the only relief they seek—we remand with instructions to dismiss the case.

I.

A.

The abundance of the Atlantic striped bass (also known as rockfish) once “astonished the early [European] settlers in New England.” John C. Pearson, *The Life History of the Striped Bass, or Rockfish, Roccus Saxatilis (Walbaum)*, 49 Bull. Bureau Fisheries 825, 825 (1938). In 1614, Captain John Smith wrote that he saw so many striped bass in the Chesapeake Bay “that it seemed to me that one mighte go over their backs drisho'd [dry-shoed].” Dick Russell, *Striper Wars: An American Fish Story* 13 (2005). In

1623, the Plymouth settlers used their last boat and a single net to catch enough striped bass to feed themselves through autumn. *Id.* at 14. Roger Williams recounted that the Narragansett Indians called striped bass *missuckeke-kequock*, which meant “much fish” or “great fish.” *Id.* at 13.

Despite the abundance of striped bass, colonial Americans recognized that their supply was finite. Pearson, *supra*, at 825–26. In 1625, Massachusetts prohibited using any bass as fertilizer—likely the first statutory conservation measure in colonial America. *Id.* Anxiety regarding overfishing intensified in the nineteenth century. Robert B. Roosevelt warned in 1870 that “the insatiable maw of the New York market” had seriously degraded the striped-bass population. Russell, *Striper Wars* 16. His nephew, President Theodore Roosevelt, fished for striped bass from the “bass stands” of Cuttyhunk Island, Massachusetts, in the early 1900s but found that the fish’s population “had been reduced to extremely low levels.” *Id.*

Motivated in part by the decline of the striped bass, the fourteen Atlantic coastal states and Pennsylvania formed an interstate compact in 1940 to coordinate fishery management measures. *See Atlantic States Marine Fisheries Compact*, Pub. L. No. 77-539, ch. 283, 56 Stat. 267, 267 (1942) [hereinafter *Compact*], *amended by* Pub. L. No. 81-721, 64 Stat. 467 (1950). Congress approved the agreement via the Constitution’s Compact Clause, and the Atlantic States Marine Fisheries Commission was created. *Id.*; *see* U.S. Const. art. I, § 10, cl. 3.

The Commission, which is composed of three representatives per state, does not regulate states or individuals; rather, it “recommend[s]” regulations to the compacting

states. Compact, Art. IV, 56 Stat. 268. The Compact neither “limit[s] the powers of any signatory state” nor prevents states from “imposing additional conditions” beyond the Commission’s recommendations. *Id.* Art. IX, 56 Stat. 269. States may leave the Commission for any reason by providing six months’ notice. *Id.* Art. XII, 56 Stat. 269.

Despite the Commission’s efforts, striped-bass populations continued to decline throughout the twentieth century. Russell, *Striper Wars* 17–18. New power boats equipped with radar and sonar caught swaths of striped bass, and recreational angling increased exponentially in the 1970s. *Id.* In 1979, Congress ordered an emergency striped-bass research survey, *see* Act of Nov. 16, 1979, Pub. L. 96-118, 93 Stat. 859, 860, which found a precipitous decline in striped-bass survival in the preceding decade such that “too few young survive to replace their parents,” U.S. Fish & Wildlife Serv., Dep’t of the Interior & Nat’l Marine Fisheries Serv., Dep’t of Com., *Emergency Striped Bass Research Study: 1981 Annual Report* 11.

Concluding that striped-bass stocks “have been severely reduced,” Congress strengthened the Commission’s hand in 1984 by enacting the Atlantic Striped Bass Conservation Act, Pub. L. No. 98-613, § 2, 98 Stat. 3187, 3187 (1984) [hereinafter Bass Act] (codified as amended at 16 U.S.C. § 5151 et seq.). The Bass Act created a federal enforcement mechanism for Commission recommendations. Under the Bass Act, if the Commission finds that a state failed to adopt measures consistent with its striped-bass plans, it reports that finding to the Secretaries of Commerce and Interior. 16 U.S.C. § 5153(a), (c). If they agree with the Commission’s finding, the Secretaries must impose a

moratorium on striped-bass fishing in that state's waters until the state remedies its failure. *Id.* §§ 5152(9), 5154(a).¹

This approach soon proved effective. The first Commission plan under the Bass Act called for states to implement conservation measures such as minimum size limits. Atl. States Marine Fisheries Comm'n, *Fishery Management Report: Amendment 3 to the Interstate Fishery Management Plan for the Atlantic Striped Bass* (1985). Some states—including Maryland—went further by imposing a total moratorium on striped-bass fishing. Atl. States Marine Fisheries Comm'n, *Forging Knowledge into Change* 52 (2017). In 1995, the Commission “declared coastal and Chesapeake Bay striped bass stocks restored.” *Id.* at 53. “The resurgence of striped bass along the eastern coast of the U.S. is probably the best example in the world of a species that was allowed to recoup through tough management and an intelligent rebuilding plan.” Carl Safina, *The World's Imperiled Fish*, *Sci. Am.* Nov. 1995, at 46, 53.

B.

But striped bass were still not off the hook. The Commission's 2019 benchmark assessment found the striped-bass stock once again to be “overfished and experiencing

¹ In 1993, Congress applied this approach to all other species of Atlantic fish. Atlantic Coastal Fisheries Cooperative Management Act, Pub. L. No. 103-206, 107 Stat. 2447 (1993) (codified as amended at 16 U.S.C. § 5101 et seq.).

overfishing.”² Atl. States Marine Fisheries Comm’n, *Addendum VI to Amendment 6 to the Atlantic Striped Bass Interstate Fishery Management Plan* § 1.0 (2019).

So, in 2019, the Commission amended its striped-bass plan to rebuild populations “no later than 2029,” and permitted the Striped Bass Management Board³ to quickly amend the plan further in response to future stock assessments. Atl. States Marine Fisheries Comm’n, *Amendment 7 to the Interstate Fishery Management Plan for Atlantic Striped Bass* §§ 4.4, 4.7 (2022). Striped-bass populations seemed to stabilize, and in 2021, the Commission’s data indicated a “very high chance” of rebuilding striped-bass stocks to the target level by 2029. Atl. States Marine Fisheries Comm’n, *Addendum II to Amendment 7 to the Atlantic Striped Bass Interstate Fishery Management Plan for Atlantic Sea Bass* § 2.2.2 [hereinafter *Addendum II*].

That changed in 2022 when the Commission found that recreational harvest of striped bass had increased *eighty-eight percent* from the previous year (while commercial removals remained steady). *Id.* § 2.2.1. The Commission’s new projections showed that, without action, there was only a fifteen percent chance of rebuilding striped-bass stocks by 2029. *Id.* The Striped Bass Management Board undertook to amend the 2019 plan, using the procedures contained in that plan. After holding fifteen public hearings and receiving

² “Overfished” means that the stock of fish is currently below a sustainable level, while “experiencing overfishing” means that the rate of fishing is above a sustainable level. Atl. States Marine Fisheries Comm’n, *Fisheries Science 101*, <https://asmfc.org/fisheries-science/fisheries-science-101> [<https://perma.cc/QH8F-9D47>].

³ The Commission has a management board—essentially a subcommittee—for each species within its jurisdiction. Atl. States Marine Fisheries Comm’n, *Interstate Fisheries Management Program Charter* [hereinafter *Charter*] § 4.

2,832 written public comments, the Management Board promulgated Addendum II, the target of this lawsuit. Atl. States Marine Fisheries Comm'n, *Proceedings of the Atlantic Striped Bass Management Board Meeting—January 2024*, at 5 [hereinafter *Board Minutes*].

Among other measures, Addendum II recommended limiting the customers of Maryland charter boats to keeping one striped bass per day starting in 2024, down from two. *Addendum II* § 3.1.1. Private boats and shore fishers were already subject to a one-fish limit for striped bass, as were nearly all charter boats in states other than Maryland. See Atl. States Marine Fisheries Comm'n, *Review of the Interstate Fishery Management Plan for Atlantic Striped Bass: 2022 Fishing Year 23–25* (2024).

One of Maryland's three Commission representatives moved to delay the one-fish limit for an additional year, and to instead "implement" the limit on January 1, 2025, "so that our businesses can plan for the change that will be coming." *Board Minutes* at 28, 30. A representative from New Hampshire opposed the motion because "what we're trying to do here is to reduce the removals *in 2024* by 14.5 percent," but the Maryland representative's proposed solution "would have [only] an 11 percent reduction, and so it doesn't get us to where we need to be in 2024." *Id.* at 29 (emphasis added). The motion failed. *Id.* at 30. Maryland's representatives then voted against including the one-fish limit in Addendum II at all, but the limit was approved. *Id.* at 32. Finally, Maryland's representatives voted against Addendum II as a whole, but it was approved. *Id.* at 52.

Maryland's representatives did not exercise their authority to appeal the one-fish limit or Addendum II to the Commission. See Charter § 4(h). And—despite a request from

Plaintiffs—Maryland’s Attorney General did not sue to enjoin the plan in court. Opening Br. at 30–31; *see New York v. Atl. States Marine Fisheries Comm’n*, 609 F.3d 524, 536 (2d Cir. 2010) (“[M]ember states may seek judicial relief to enforce rights under the [Compact].”).

Following the Commission’s adoption of Addendum II, the Maryland Department of Natural Resources quickly moved to implement emergency regulations in accordance with the plan, including limiting the customers of charter boats to keeping one striped bass per day. *Maryland Enacts Striped Bass Emergency Regulations to Increase Protections for the Spawning Population*, Md. Dep’t of Nat. Res. (Feb. 9, 2024), <https://news.maryland.gov/dnr/2024/02/09/maryland-enacts-striped-bass-emergency-regulations-to-increase-protections-for-the-spawning-population/> [<https://perma.cc/F7BY-RE5C>]. Its proposed regulations also imposed additional measures beyond those required by Addendum II, including cancelling the Spring 2024 striped-bass trophy-fishing season. *Id.* The Department expressed concern that in 2023, “Maryland’s annual striped bass young-of-year index, which tracks reproductive success, was 1.0, well below the long-term average of 11.1.” *Id.* The Maryland General Assembly’s Joint Committee on Administrative, Executive, and Legislative Review approved the emergency regulations. Md. Code Regs. 08.02.15.09 (2024). The emergency regulations took effect on February 9, 2024, and lasted through June 15, 2024; the Department of Natural Resources permanently adopted them on November 25, 2024. *Id.*

C.

Plaintiffs are a fisheries trade association, a professional group of charter-boat captains, and two individuals (a commercial fisherman and a charter-boat captain). In March 2024, Plaintiffs sued the Commission in federal district court. Their complaint brought due-process and takings claims under the federal Constitution and related claims under the Maryland Constitution and 42 U.S.C. § 1983. Plaintiffs sought an “order and judgment holding unlawful, enjoining, and setting aside [Addendum II].” J.A. 26. Soon after, Plaintiffs moved for a preliminary injunction against Addendum II. They provided declarations alleging serious economic harm, including that Addendum II is “the tipping point that will unquestionably force good businesses to close their doors.” J.A. 60.

After a hearing, the district court denied Plaintiffs’ preliminary-injunction motion, finding that Plaintiffs were unlikely to succeed on the merits of their claims. The court primarily concluded that Plaintiffs likely lacked standing, as their alleged injuries were not likely to be redressed by an injunction against Addendum II. The court found it was “unlikely that enjoining the addendum will have any impact on Maryland’s decision to enact regulations in conformity with the addendum.” *Delmarva Fisheries Ass’n v. Atl. States Marine Fisheries Comm’n*, No. 24-cv-688, 2024 WL 1721066, at *3 (D. Md. Apr. 22, 2024).

The district court further concluded that, even if Plaintiffs had standing to sue, they did not plausibly state a claim for relief. The court noted that “Addendum II was issued after a thorough deliberative process in which the State of Maryland participated, and Plaintiffs had notice and opportunity to comment on its measures.” *Id.* And it found it

unlikely that Plaintiffs even had an available cause of action under Section 1983, “as the Commission is not a ‘person’ within the meaning of the statute, it does not act under ‘color of state law,’ and Congress did not intend to create a private remedy authorizing private parties to bring federal court actions challenging the Commission’s fishery planning decisions.” *Id.* (quoting 42 U.S.C. § 1983). The court therefore did not reach the other preliminary-injunction factors.

Plaintiffs timely appealed.

II.

Although we have jurisdiction to review a district court’s denial of a preliminary injunction under 28 U.S.C. § 1292(a)(1), we must first ask if Plaintiffs have standing to sue at all. *Adams Outdoor Advert. Ltd. P’ship v. Beaufort County*, 105 F.4th 554, 565–66 (4th Cir. 2024) (“Federal courts are required to ensure that they have jurisdiction and must address standing problems even when the parties do not raise them.”).

The district court found that Plaintiffs failed to show it was likely that they had standing, so the court denied their motion for preliminary injunction. We conclude that we are required to go further: because Plaintiffs’ complaint fails to plausibly plead the elements of standing, the federal courts lack jurisdiction to consider their request for a preliminary injunction (or any other relief) at all, so we remand with instructions to dismiss.

If a plaintiff fails to plausibly allege the elements of standing in their complaint, federal courts do not have jurisdiction over their claims. *Bishop v. Bartlett*, 575 F.3d 419, 424 (4th Cir. 2009) (“[T]he party invoking the jurisdiction of the court must include the necessary factual allegations in the pleading, or else the case must be dismissed for lack of

standing.” (citing *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)); see *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (“Where, as here, a case is at the pleading stage, the plaintiff must clearly . . . allege facts demonstrating each element.” (internal quotation marks omitted)). When we determine that the federal courts lack jurisdiction over a matter, we must remand with instructions to dismiss—even when reviewing a preliminary injunction. See, e.g., *Gallanosa ex rel. Gallanosa v. United States*, 785 F.2d 116, 121 (4th Cir. 1986) (“Because we find the Virginia district court lacked jurisdiction, we vacate the entry of the preliminary injunction and remand with instructions to dismiss the action.”). In such a case, we retain jurisdiction on appeal “merely for the purpose of correcting the error of the lower court in entertaining the suit.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 95 (1998) (quotation marks omitted).

In contrast, when plaintiffs meet their burden to establish standing for purposes of the *pleading* stage but fail to show a substantial likelihood of success on the merits—including when they fail to show a substantial likelihood that they have standing—we affirm the denial of the preliminary injunction but allow the case to progress as usual below, rather than remanding with instructions to dismiss for lack of standing. See *Elec. Priv. Info. Ctr. v. U.S. Dep’t of Com.*, 928 F.3d 95, 104 (D.C. Cir. 2019) (explaining that it is appropriate to affirm the denial of a preliminary injunction if a plaintiff fails to “establish[] a substantial likelihood of standing” at the preliminary injunction stage, but that it is appropriate to remand with instructions to dismiss if a plaintiff “cannot establish standing *as a matter of law*” (internal quotation marks omitted)); see also *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (“[E]ach element [of standing] must be supported in the

same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation.”).

We conclude that Plaintiffs have not carried their burden to establish standing even at the pleading stage, so we will vacate and remand for dismissal for lack of jurisdiction.

For a plaintiff to have standing to sue, Article III requires that they “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo*, 578 U.S. at 338 (citing *Lujan*, 504 U.S. at 560–61). Here, Plaintiffs allege that “the consequence” of Addendum II’s one-fish bag limit “will be to . . . reduce [charter boat’s] business revenue by an estimated 50–65 percent.” J.A. 9. Plaintiffs maintain that the Commission “coerc[ed]” Maryland into implementing its striped-bass regulations, which in turn injured Plaintiffs. Opening Br. at 53. They ask for an order “holding unlawful, enjoining, and setting aside” Addendum II. J.A. 26.

Plaintiffs sued the Commission, not Maryland. But they are regulated by Maryland, not the Commission.⁴ So, to have standing to enjoin the Commission’s actions, Plaintiffs must show that doing so will change how Maryland regulates them. Where choices by an “independent actor[]” are involved—here, the sovereign state of Maryland—Plaintiffs face the “difficult” burden of showing how Maryland would respond if the Commission’s

⁴ Plaintiffs also argue, without support, that the Commission “directly regulate[s]” them. Opening Br. at 18. But the Commission “recommend[s]” regulations to states. Compact, Art. IV, 56 Stat. 268. It does not itself promulgate regulations or otherwise bind individuals.

Addendum II were enjoined. *Lujan*, 504 U.S. at 562. In other words, Plaintiffs must plausibly allege that Maryland would likely rescind its one-fish limit on charter boats if the district court enjoined Addendum II. They have not done so.

First, Plaintiffs' allegation that the Commission coerced Maryland to enact the regulations that are allegedly causing them harm is unpersuasive. Maryland voluntarily entered the Commission and may withdraw for any reason. Compact, Art. XII, 56 Stat. 269. As the Commission has authority to recommend plans only to its "member states," Atl. States Marine Fisheries Comm'n, *Rules and Regulations*, Art. I § 2 (1942) (amended 2016), only member states are subject to Bass Act penalties for noncompliance with Commission plans, *see* 16 U.S.C. §§ 5152–5154. And taking a step back, Maryland has collaborated with the other states in the Commission for over eighty years to preserve critical fisheries in the Chesapeake Bay and the Atlantic Ocean. As with any collaboration, sometimes Maryland takes and sometimes it gives. But it would probably surprise Maryland to hear that it has been coerced.

Second, even if Plaintiffs could establish that the Commission did "coerce" Maryland to adopt the regulations, they would still need to plausibly allege that Maryland would opt to *rescind* its duly enacted regulations if Addendum II were enjoined. When Plaintiffs' "asserted injury arises from" the Commission's alleged coercion "of *someone else*," it becomes the "burden of the plaintiff to adduce facts showing that those choices have been or will be made in such manner as to . . . permit redressability of injury." *Lujan*, 504 U.S. at 562. But Plaintiffs fail to even *allege* that Maryland would likely repeal its regulations if Addendum II were enjoined. And even if they had made that bare allegation,

they would have needed to provide an explanation given that Maryland chose to adopt regulations *more* stringent than Addendum II's recommendations.

In sum, Plaintiffs have not plausibly alleged that Maryland is likely to repeal its striped-bass regulations if Addendum II were to be enjoined. So Plaintiffs lack standing as they have failed to plead facts showing that an injunction of Addendum II would likely redress their injuries. Accordingly, we must instruct the district court to dismiss this case.

III.

Because Plaintiffs lack standing to sue the Commission, we vacate the district court's order denying the preliminary injunction and remand with instructions to dismiss this action.

*VACATED AND REMANDED
WITH INSTRUCTIONS*

Exhibit G

Declaration of Brian Hardman

In the Supreme Court of the United States

DELMARVA FISHERIES ASSN., INC., et al.

Applicant

v.

**ATLANTIC STATES MARINE
FISHERIES COMMISSION**

Respondent

**To the Honorable John G. Roberts, Jr., Chief Justice of the United States
and Circuit Justice for the Fourth Circuit**

**PETITIONERS' EMERGENCY APPLICATION FOR
A WRIT OF INJUNCTION FOR INTERIM RELIEF**

DECLARATION OF BRIAN L. HARDMAN

In accordance with 28 U.S.C. § 1746, Brian L. Hardman offers the following declaration:

1. I am the President of the Maryland Charter Boat Association (MCBA).
2. MCBA is an Applicant in this Petition, a Plaintiff in the below-referenced case, and also the Appellant in the case dismissal by the Fourth Circuit (Case No. 24-1388).
3. I am the Owner/Operator of Lead Dog Charters LLC, Stevensville, Maryland.
4. On February 16, 2024, I submitted a Declaration in this case stating that on the basis of my then experience and that of MCBA members at the time, it was expected “that business revenue will decline 50% or more if these rules are not changed back to the 2023 limits.”
5. On April 8, 2024, in connection with the same District Court case, I submitted a further Declaration that due to even more cancellations than expected and the lack of new charter boat reservations, that the revenue fall-off in 2024 with respect to the “for hire” charter boat business is estimated to be 70 percent or more.
6. For example, my April 8, 2024 Declaration referenced that Lead Dog Charters had, on that equivalent date in 2023, 62 charter reservations for the upcoming fishing season. The equivalent number to that date for the entire 2024 striped bass fishing season was 16, i.e., a decline of 75 percent.
7. Now that the 2024 striped bass fishing season has been completed, I can report that the number of for-hire charter boat trips declined by over 50% especially among the larger boat trips of 10-12 persons. Second, the number of striped bass caught by charter boat customers fell by 67% and, most importantly, the 2024 revenue decline from striped bass fishing trips due to the ASMFC Addendum II was precisely as we predicted in our request for a preliminary injunction, namely 70% or more.
8. On the basis of interviews with the MCBA membership of for-hire charter boats, I can also report there are some charter captains who experienced cancellations and lack of new reservations as high as 85 percent off their previous year’s business volume.
9. Boat captains have been forced to put their vessels up for sale at an unprecedented level so that charter boat resales have been at distressed prices with almost no in-state buyers.
10. The early sign-ups for the 2025 fishing season continue to be minimal compared to the same time period in 2023 and will likely decline even further from the 70% drop-off we saw last year.

11. At the time of this declaration, 43 for-hire charter boat businesses, some of which have been family-run for generations, have been forced to close their doors and another eleven companies are losing money and are about to go out of business as a consequence of the ASMFC and the State of Maryland adopting and continuing to implement the 2024 limitations on striped bass fishing.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 23, 2025

A handwritten signature in black ink, appearing to read "Brian L. Hardman", is written over a horizontal line.

Brian L. Hardman

Exhibit H

Meeting Overview of Atlantic Striped Bass Management Board

MEETING OVERVIEW

Atlantic Striped Bass Management Board

February 4, 2025

3:00 – 5:00 p.m.

Chair: Megan Ware (ME) Assumed Chairmanship: 1/24	Technical Committee Chair: Tyler Grabowski (PA)	Law Enforcement Committee Rep: Sgt. Jeff Mercer (RI)
Vice Chair: Chris Batsavage (NC)	Advisory Panel Chair: Vacant	Previous Board Meeting: December 16, 2024
Voting Members: ME, NH, MA, RI, CT, NY, NJ, PA, DE, MD, DC, PRFC, VA, NC, NMFS, USFWS (16 votes)		

2. Board Consent

- Approval of Agenda
- Approval of Proceedings from December 2024

3. Public Comment – At the beginning of the meeting, public comment will be taken on items not on the agenda. Individuals that wish to speak at this time must sign-in at the beginning of the meeting. For agenda items that have already gone out for public hearing and/or have had a public comment period that has closed, the Board Chair may determine that additional public comment will not provide additional information. In this circumstance, the Chair will not allow additional public comment on an issue. For agenda items that the public has not had a chance to provide input, the Board Chair may allow limited opportunity for comment. The Board Chair has the discretion to limit the number of speakers and/or the length of each comment.

4. Stock Assessment Schedule (3:15-3:45 p.m.) Possible Action

Background

- Work on the 2027 Benchmark Stock Assessment for Atlantic Striped Bass will begin in 2025 and is scheduled to be presented to the Board in May or August 2027.
- A 2026 Stock Assessment Update is tentatively scheduled as well.
- The Technical Committee (TC) and Stock Assessment Subcommittee (SAS) met to discuss concerns about the timing of the 2026 Assessment Update since it would directly overlap with work on the 2027 Benchmark Assessment (**Supplemental Materials**).

Presentations

- Overview of stock assessment timeline and TC recommendation by K. Drew

Board action for consideration at this meeting

- Consider whether to conduct a 2026 stock assessment update

5. Draft Addendum III (3:45-5:00 p.m.)

Background

- After receiving updated projections and potential 2025 management options in the December 2024 TC Report, the Board maintained status quo measures for 2025 and initiated an addendum to consider 2026 management measures to support stock rebuilding.
- Board guidance on the scope of potential management options for 2026 is needed to inform the Plan Development Team's (PDT) analyses (**Briefing Materials**).

Presentations

- Overview of timeline and initial scope of Draft Addendum III by E. Franke

Board guidance for consideration at this meeting

- Provide guidance to the PDT for Draft Addendum III

5. Other Business/Adjourn (5:00 p.m.)

Exhibit I

Bay Journal Article (Feb. 26, 2024)

https://www.bayjournal.com/news/fisheries/striped-bass-harvest-restrictions-trigger-widespread-impact/article_e5e19f68-d4c5-11ee-8f54-c37c5983df6c.html

Striped bass harvest restrictions trigger widespread impact

Timothy B. Wheeler

Feb 26, 2024



Charter boat customers haul in a catch. New curbs on recreational and commercial fishing for striped bass in the Bay and along the Atlantic coast are set to take effect May 1. (Steve Droter/Chesapeake Bay Program)

It's going to be a lean year for those who like to catch or eat Atlantic striped bass — with still leaner times perhaps to come.

The Atlantic States Marine Fisheries Commission, which regulates inshore fishing for migratory species, has **ordered new curbs**, starting May 1, on both recreational and commercial catches of the popular finfish, also known as rockfish in the Chesapeake Bay region.

The debate continued during the board's five-hour January meeting in Arlington, VA, as commission members from different states pondered how to spread the pain of reducing the catch.

The new recreational catch size "slots" were chosen with the hope of conserving two groups of fish: those not yet old enough to spawn and larger ones that are prolific spawners.

The board's scientific advisors project that the new size restrictions will reduce the overall recreational catch of striped bass by 14.5%. For Maryland's charter fishing industry, though, the cutback will be more severe because until now their customers have been allowed to keep two fish a day.

That's been a sore point with many sports anglers, who pressed the board to impose a one-fish limit across the board this year, with no exceptions.

Mike Luisi, a commission member and fisheries manager with the Maryland Department of Natural Resources, warned that cutting the state's charter boat clients' catch to one fish a day "will put people out of business." He tried, without success, to persuade the board to soften the economic impact on the for-hire fleet or place some less onerous alternative restriction on them.

Others, though, insisted on a uniform one-fish daily limit in the Bay and coastwide.

"The dark days are coming," warned David Sikorski, a commission member and executive director of the Coastal Conservation Association of Maryland. "It's time to buck up [and] reduce fishing mortality."

The striped bass management board also struggled over what to do about the commercial harvest.

Some members, heeding appeals from recreational anglers, wanted to cut the fishing industry's catch quota by 14%, roughly on par with the recreational reductions they'd agreed to. But others argued the industry shouldn't pay for the excesses of recreational anglers along the Atlantic coast, who had been mainly responsible for the big increase in estimated fishing mortality. More than half of the 2022 recreational catch came from New Jersey and New York, the commission said, with just 20% from the Bay.

Exhibit J

ASMFC News Release: Striped Bass Board Approves Addendum II



Atlantic States Marine Fisheries Commission

NEWS RELEASE

Sustainable and Cooperative Management of Atlantic Coastal Fisheries

FOR IMMEDIATE RELEASE
January 25, 2024

PRESS CONTACT: Tina Berger
703.842.0749

ASMFC Atlantic Striped Bass Board Approves Addendum II Establishes Measures to Continue Progress Towards Stock Rebuilding

Arlington, VA – The Commission’s Atlantic Striped Bass Management Board approved Addendum II to Amendment 7 to the Interstate Fishery Management Plan (FMP) for Atlantic Striped Bass. The Addendum modifies recreational and commercial measures to reduce fishing mortality in 2024, establishes an expedited response process to upcoming stock assessments, and addresses requirements for recreational filleting. Addendum II builds upon the 2023 emergency action by changing the measures in the FMP to reduce fishing mortality and support stock rebuilding. Addendum II measures will replace the emergency action measures upon its implementation by the states by May 1, 2024.

“First and foremost, thank you to the 2,000 members of the public who submitted public comments. The Board had difficult issues to discuss, and public comments were a crucial part of the deliberations,” said Board Chair Megan Ware from Maine. “The Board remains focused on rebuilding the stock by 2029. The upcoming 2024 stock assessment will be an important checkpoint on progress toward rebuilding.”

For the ocean recreational fishery, the Addendum implements a 28” to 31” slot limit, 1-fish bag limit, and maintains 2022 season dates for all fishery participants; this maintains the same ocean recreational measures adopted under the recent emergency action. For the Chesapeake Bay recreational fishery, the Addendum implements a 19” to 24” slot limit, 1-fish bag limit, and maintains 2022 season dates for all fishery participants. For the commercial fishery, the Addendum reduces commercial quotas by 7% in both the ocean and Chesapeake Bay.

To address concerns about recreational filleting allowances and compliance with recreational size limits, the Addendum establishes two requirements for states that authorize at-sea/shore-side filleting of striped bass: racks must be retained and possession limited to no more than two fillets per legal fish.

The Atlantic States Marine Fisheries Commission was formed by the 15 Atlantic coastal states in 1942 for the promotion and protection of coastal fishery resources. The Commission serves as a deliberative body of the Atlantic coastal states, coordinating the conservation and management of nearshore fishery resources, including marine, shell and diadromous species.

1050 N. Highland Street • Suite 200A-N • Arlington, VA 22201
703.842.0740 (phone) www.asmfmc.org

To enable an expedited management response to upcoming stock assessments prior to the 2029 rebuilding deadline, the Addendum establishes a mechanism allowing the Board to respond to a stock assessment via Board action if the stock is not projected to rebuild by 2029.

States must submit implementation plans by March 1, 2024 for Board review and approval, which will take place at a special Board meeting to be scheduled for later in March. All Addendum II measures must be implemented by May 1, 2024.

Addendum II will be available in February on the Commission website at <http://www.asmfc.org/species/atlantic-striped-bass> under Management Plans and FMP Reviews. For more information, please contact Emilie Franke, Fishery Management Plan Coordinator, at efranke@asmfc.org or 703.842.0740.

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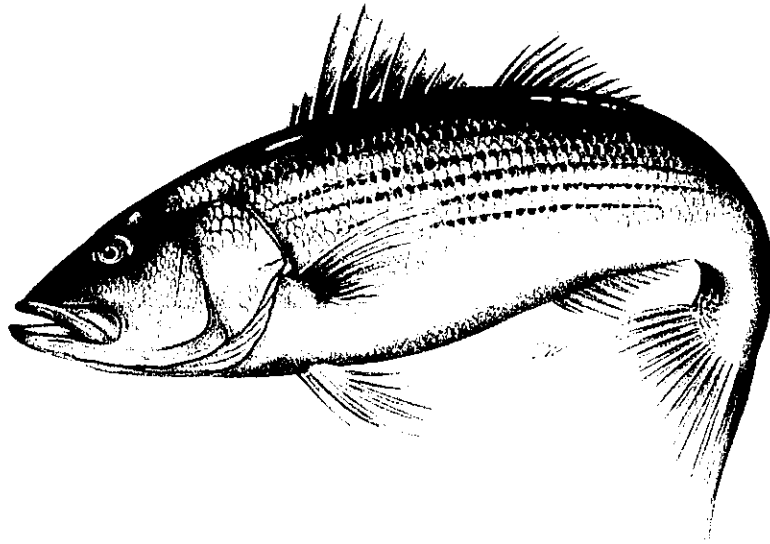
Exhibit K

Addendum II to Amendment 7 to the Interstate FMP for Atlantic Striped Bass

Atlantic States Marine Fisheries Commission

**ADDENDUM II TO AMENDMENT 7
TO THE INTERSTATE FISHERY MANAGEMENT PLAN
FOR ATLANTIC STRIPED BASS**

Interim Commercial and Recreational Management Measures



January 2024



Sustainable and Cooperative Management of Atlantic Coastal Fisheries

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1.0 INTRODUCTION

Atlantic striped bass (*Morone saxatilis*) are managed through the Atlantic States Marine Fisheries Commission (Commission) in state waters (0–3 miles) and through NOAA Fisheries in federal waters (3–200 miles). The management unit includes the coastal migratory stock from Maine through North Carolina. State waters fisheries for Atlantic striped bass are currently managed under Amendment 7 to the Interstate Fishery Management Plan (FMP), Addendum I to Amendment 7, and a temporary Emergency Action (effective May 2, 2023 until the measures in this addendum are implemented by the states by May 1, 2024). Harvesting or targeting striped bass in federal waters has been prohibited by NOAA Fisheries since 1990.

In May 2023, the Atlantic Striped Bass Management Board (Board) initiated Addendum II to Amendment 7 to address stock rebuilding beyond 2023. The Board initiated the draft addendum via the following approved motion:

“Move to initiate an Addendum to implement commercial and recreational measures for the ocean and Chesapeake Bay fisheries in 2024 that in aggregate are projected to achieve F-target from the 2022 stock assessment update ($F = 0.17$). Potential measures for the ocean recreational fishery should include modifications to the Addendum VI standard slot limit of 28-35” with harvest season closures as a secondary non-preferred option. Potential measures for Chesapeake Bay recreational fisheries, as well as ocean and Bay commercial fisheries should include maximum size limits. The addendum will include an option for a provision enabling the Board to respond via Board action to the results of the upcoming stock assessment updates (e.g., currently scheduled for 2024, 2026) if the stock is not projected to rebuild by 2029 with a probability greater than or equal to 50%.”

In August 2023, the Board removed consideration of recreational harvest season closures; added options for commercial quota reductions, recreational for-hire specific measures, and minimum requirements for states allowing filleting in the recreational fishery; and provided direction on the range of other commercial and recreational management options requested.

In October 2023, the Board added more options for the ocean recreational slot limit; removed some Chesapeake Bay recreational options that would have resulted in vastly different measures across Bay jurisdictions; and removed consideration of commercial maximum size limits. Although commercial maximum size limits were part of the initial scope of this addendum, the Board removed those options from consideration based on recommendations from the Atlantic Striped Bass Technical Committee (TC)¹. The TC concluded that the overall effect of a commercial maximum size limit option would be increased uncertainty around rebuilding probabilities without positively impacting stock productivity or stock rebuilding. Based on these TC findings, the Board removed consideration of commercial maximum size limits and instead decided to consider a commercial quota reduction to reduce commercial removals.

¹ The TC’s full analysis of commercial maximum size limits is available here:
http://www.asmfc.org/uploads/file/653fd79fStripedBassTC_Report_Sept2023.pdf

The Board intends to consider the results of the upcoming 2024 stock assessment update to inform subsequent management action beyond this addendum.

2.0 OVERVIEW

2.1 Statement of the Problem

Atlantic striped bass were declared overfished in 2019 and are subject to a rebuilding plan that requires the stock to be rebuilt to its spawning stock biomass target by 2029. The most recent rebuilding projections indicate a low probability of meeting that deadline if the fishing mortality rate associated with the level of catch in 2022 continues. There is concern that the recreational and commercial management measures in Amendment 7, in combination with the availability of the strong 2015 year-class to the fisheries, will lead to a similarly high level of catch in 2024. In response, this addendum implements measures designed to reduce removals from the 2022 level to achieve the target fishing mortality rate and support stock rebuilding.

Stock assessments will be completed during the rebuilding period and used to gauge the success of the measures in achieving the target fishing mortality rate and to estimate the probability of rebuilding the stock by 2029. These assessments are typically completed during the second half of the calendar year, so if a management response is needed to reduce fishing mortality, the typical addendum development and implementation schedule results in new measures not being implemented until two years later. There is concern that such delays may impede rebuilding, especially as the deadline to achieve a rebuilt stock nears. Accordingly, this addendum implements a mechanism that allows the Board to adjust management measures in response to upcoming stock assessments via Board action, which would be faster than a typical addendum process, if deemed necessary to achieve stock rebuilding by 2029.

2.2 Background

2.2.1 Stock Status

Female spawning stock biomass (SSB) and fishing mortality (F) are estimated on a regular basis and compared to target and threshold levels (i.e., biological reference points) to assess the status of the striped bass stock. The 1995 estimate of female SSB is used as the SSB threshold because many stock characteristics, such as an expanded age structure, were reached by this year, and this is also the year the stock was declared recovered. The female SSB target is equal to 125% of the female SSB threshold. The associated F threshold and F target are calculated to achieve the respective SSB reference points in the long term.

The most recent assessment for striped bass was an update completed in 2022 with data through 2021. Prior to this, the 2018 Benchmark Stock Assessment had determined that striped bass were overfished and experiencing overfishing in the terminal year (2017). Following the implementation of new management measures in 2020, the 2022 Stock Assessment Update found that the stock was no longer experiencing overfishing in 2021 ($F = 0.14$, below the threshold of 0.20 and the target of 0.17) but remained overfished (Female SSB = 143 million pounds, below both the target of 235 million pounds and the threshold of 188 million pounds) (Figures 1 and 2). These reference points were

calculated using the “low recruitment assumption” (per Amendment 7’s requirement under a tripped recruitment trigger), which resulted in a lower, more conservative F target and threshold compared to the 2018 benchmark assessment. Although below the threshold and considered overfished, female SSB in 2021 was still estimated to be more than three-times of that during the early 1980s, when the stock was considered collapsed (Figure 1).

The assessment also indicated a period of strong recruitment (numbers of age-1 fish entering the population) from 1994–2004, followed by a period of low recruitment from 2005–2011 (although not as low as the period of stock collapse in the early 1980s) (Figure 1). This period of low recruitment contributed to the decline in SSB that the stock has experienced since 2010. Recruitment of age-1 fish was high in 2012, 2015, 2016, and 2019 (corresponding to strong 2011, 2014, 2015, and 2018 year classes, respectively); however, estimates of age-1 striped bass were below the long-term average in 2018, 2020, and 2021.

The 2022 assessment also included short-term projections to determine the probability of SSB being at or above the SSB target by 2029. These projections also used the low recruitment assumption, which restricts the estimates of age-1 recruitment to those occurring during 2008–2021, rather than the longer time series of 1993–2021. These projections indicated that under the 2021 fishing mortality rate, there was a 97% probability the stock will be rebuilt by 2029 (Figure 3).

However, concerns over high recreational removals in 2022 compared to 2021 (the terminal year of the most recent assessment update) prompted the Board to request updated stock projections using 2022 preliminary removals. These estimates of preliminary 2022 removals and updated stock projections were presented to the Board in May 2023. The data showed that while commercial removals in 2022 were similar to those in 2021, recreational harvest had increased 88% and recreational live releases by 3%, resulting in an overall 38% increase in recreational removals (relative to 2021). These 2022 removals were used to estimate F in 2022. Since striped bass catch and F rates vary from year-to-year (even under the same regulations), the average F from 2019–2022 (excluding 2020 due to uncertainty associated with COVID-19 impacts) was applied to 2023–2029 in the new projections. Under this F rate, the new projections estimate the probability of rebuilding SSB to its target by 2029 drops from 97% to 15% (Figure 3).

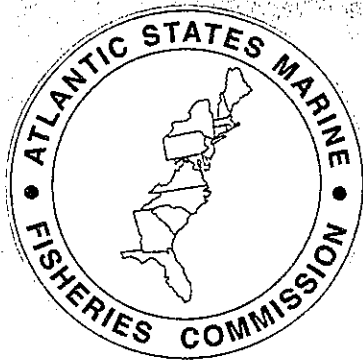
It should be noted that these projections are not the same as a full stock assessment update where the model would be re-run to include the 2022 catch-at-age and index data. Accordingly, the status of the stock remains overfished but is not experiencing overfishing as per the 2022 stock assessment update. The next stock assessments for striped bass are currently scheduled for 2024 (an update with data through 2023), tentatively 2026 (an update with data through 2025), and 2027 (a benchmark—in which the inputs and methods are fully re-evaluated—likely with data through 2026).

2.2.2 Management Status

Striped bass are currently managed under Amendment 7 to the Interstate Fishery Management Plan (FMP), Addendum I to Amendment 7, and a temporary Emergency Action (effective May 2, 2023 until the measures in this addendum are implemented by the states by May 1, 2024).

Exhibit L

ASMFC Fish Habitat of Concern for Fish and Shellfish Species



Fish Habitat of Concern Designations for Fish and Shellfish Species

*Managed by the
Atlantic States Marine Fisheries Commission*

January 2024

Prepared by the
ASMFC Habitat Committee and
Habitat Program Coordinator

sedimentation, thermal pollution, contaminant loads, and nutrient influx (Beach 2002; Wheeler et al. 2005; NRC 2009; Hughes et al. 2014a; 2014b). Urbanization also introduces additional industrial wastes, contaminants, endocrine disruptors, stormwater runoff, and road salt, that are all ecological stressors (Brown 2000; NRC 2009; Benejam et al. 2010; McBryan et al. 2013; Branco et al. 2016; Kaushal et al. 2018; Baker et al. 2019).

In summary, striped bass concentration in specific tidal reaches at various life stages, the impact of temperature and river discharge on egg and larval survival and age-0 recruitment, and the influence of watershed activities (i.e., agriculture and urbanization) play pivotal roles in the dynamics of striped bass year-class success and population health. These factors, combined with long-term climate patterns and human activities will impact their spawning and nursery habitats, thereby necessitating continued monitoring and conservation efforts to support striped bass populations in Atlantic coastal waters.

The management of Striped Bass FHOc and the factors influencing them, such as water quality and watershed land use patterns, typically falls outside the jurisdiction of state agencies responsible for fishery management. Instead, these agencies often play an advisory role in local, state, and federal decision-making processes that directly affect water quality and the condition of Striped Bass FHOc. However, the inclusion of fish habitat considerations in these decisions varies widely among jurisdictions, and while individual choices may have a limited impact, the cumulative effect of numerous decisions significantly affects the condition of Striped Bass FHOc.

Although we are not proposing at this time to designate striped bass Atlantic Ocean habitats as FHOc, we note for the record that the offshore habitats used by the coastal migratory stock during winter are very important to the health, sustainability, and production of the stock. During their winter residency in the ocean, sexually mature adult striped bass feed heavily upon schooling prey species (i.e., especially Atlantic herring, Atlantic menhaden, bay anchovy; see Nelson et al. 2006; Overton et al. 2008), which influence striped bass condition and spawning. Lipids are the source of metabolic energy for growth, reproduction, and swimming for fish, and these energy reserves relate strongly to foraging success, reproductive success, potential prey density, habitat conditions, environmental stressors, and subsequent fish health and survival (Tocher 2003; Jacobs et al. 2013). There is also evidence to indicate that striped bass infected with mycobacteriosis likely experience some degree of recovery due to winter residency and prey consumption in the ocean (see Jacobs et al. 2009). Striped bass schools overwintering offshore are vulnerable to recreational fishing pressure, from which they are protected when they are in the exclusive economic zone (EEZ) due to the current moratorium. These striped bass schools are also subject to bycatch in commercial large-mesh gill net fisheries (i.e., for monkfish, spiny dogfish, and other species; see Gearhart 1998). We believe that the criteria for designating FHOc in these offshore winter habitats are likely met; however, the distribution of striped bass during winter varies widely across a broad area (see Newhard 2023), making it challenging to designate any particular area as FHOc.

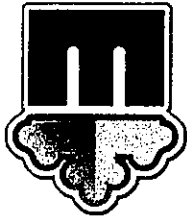
ATLANTIC STURGEON

The FHOcs for Atlantic sturgeon include the NMFS designations for the five discrete population segments (DPS) comprising the species range. The designations can be found here: <https://www.fisheries.noaa.gov/action/critical-habitat-designation-atlantic-sturgeon>. They include the reaches of Atlantic Coast rivers where spawning migrations, egg deposition, and larval and early juvenile nursery habitats occur. Threats to these habitats are multiple and include altered river flows and thermal regimes due to hydropower operations, water withdrawals, and increased incidence of storms owing to climate change; low dissolved oxygen (DO), ocean acidification, altered salinity due to navigational dredging, and ship strikes, among others.

Information regarding Atlantic sturgeon use of spawning reaches at a finer scale has increased since the CH designation in 2017, as a result of ongoing long-term studies using acoustic telemetry of sexually mature Atlantic

Exhibit M

Letter from Maryland Association of Counties, *et al.*



MARYLAND
Association of
COUNTIES

March 21, 2024

Joshua E. Kurtz
Secretary of Natural Resources
Tawes State Office Building
580 Taylor Avenue
Annapolis, MD 21401

Re: New Measures from the Atlantic State Marine Fisheries Commission (ASMFC) Limiting Atlantic Striped Bass - Opposition

Dear Secretary Kurtz,

The Rural Counties Coalition of the Maryland Association of Counties (MACo), respectfully submits its opposition to the Atlantic States Marine Fisheries Commission's (ASMFC) Addendum II to Amendment 7 of the Interstate Fishery Management Plan for Striped Bass.

The one fish bag limit, increased time slot, and restricted season dates will negatively affect the Charter Boat Industry and the commercial gill and pound netters will have their total allocation reduced by an additional 7 percent. These regulations will affect local small business models that operate in the charter boat and commercial fishing industries as well. Rural counties along Maryland's shoreline depend on these industries and oppose these changes, as they will dramatically affect economic development and the livelihood of small business owners.

Many of Maryland's waterfront businesses will undoubtedly bear financial losses due to the restrictions. For many years, these industries have operated with restrictions in harvesting and strict regulatory compliance, yet have remained in operation. The proposed restrictions will be a point that may force good businesses to close and may prohibit other businesses from locating within Maryland's coastal counties. MACo's Rural County Coalition respectfully requests that you help safeguard this small business community.

Sincerely,

Handwritten signature of Jack Wilson in black ink.

Jack Wilson
Chair, MACo Rural County Coalition;
First Vice President, MACo;
Commissioner, Queen Anne's County

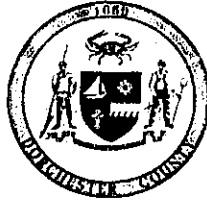
Handwritten signature of Michael Sanderson in black ink.

Michael Sanderson
Executive Director, MACo

COUNTY COUNCIL OF DORCHESTER COUNTY

**COUNTY OFFICE BUILDING
P.O. BOX 26, CAMBRIDGE, MARYLAND 21613
PHONE: (410) 228-1700
FAX: (410) 228-9641**

**GEORGE L. PFEFFER, JR., PRESIDENT
MIKE DETMER, VICE PRESIDENT
ROB KRAMER, JR.
WILLIAM V. NICHOLS
RICKY C. TRAVERS**



**JEFF POWELL
INTERIM COUNTY MANAGER
MACLEOD LAW GROUP LLC
COUNTY ATTORNEY**

March 11, 2024

The Honorable Joshua E. Kurtz
Secretary of Natural Resources
Tawes State Office Building
580 Taylor Ave
Annapolis, MD 21401

RE: Atlantic Striped Bass – Atlantic States Marine Fisheries Commission

Dear Secretary Kurtz:

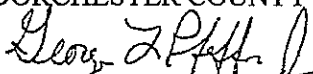
On behalf of the Dorchester County Council, I respectfully offer its opposition relating to Addendum II to Amendment 7 to the Interstate Fishery Management Plan for Atlantic Striped Bass by the Atlantic States Marine Fisheries Commission.

The Dorchester County Watermen's Association represents 736 license holders. This addendum places a hardship on the Commercial and Charter Boat Fisheries with the 1-fish bag limit, decreased size slot, restricted season dates, and 7% reduction in quota. Several years ago, the quota was decreased by 20% and fishermen are in fear that these continued reductions will terminate their livelihood. Dorchester County thrives in the seafood market, which provides an income to watermen, distributors, truck drivers, restaurants, and their respective employees. By losing businesses in this industry, it will cause a domino effect, negatively impacting tourism, which will result in fewer hotel accommodations, directly impacting hotel operations, ancillary spending and capital investments, and, indirectly affecting the supply chain and specialized service providers. Also, with the lack of lodging, sales and hotel property taxes, tax revenues will decline. Furthermore, it will cause destructive induced impacts, creating a cycle, dampening the County's overall economy. The addendum does not only put strains on fishermen, it impacts the economy as a whole, while counties and states impacted strive to enhance growth and development.

The addendum states that the latest assessment on striped bass was completed in 2022 and that, "the Board intends to consider the results of the 2024 stock assessment to inform subsequent management action beyond this addendum." We strongly urge the board to consider current assessments prior to taking any further action on restricting this industry in coming years; and, we ask for your guidance in preserving one of our County's largest industries.

Thank you for your time and consideration of this letter of opposition. If you have any questions, please contact the Council's Office at (410) 228-1700

Sincerely,
DORCHESTER COUNTY COUNCIL


George L. Pfeffer, Jr.
President

cc: The Honorable Wes W. Moore, Governor
The Honorable Johnny Mautz, Senator
The Honorable Christopher T. Adams, Delegates
The Honorable Thomas S. Hutchinson, Delegate
The Honorable Sheree Sample-Hughes, Delegate



**Queen
Anne's
County**

**THE COUNTY COMMISSIONERS OF
QUEEN ANNE'S COUNTY**

The Liberty Building
107 North Liberty Street
Centreville, MD 21617

e-mail: QACCommissioners&Administrator@qac.org

County Commissioners:

James J. Moran, At Large
Jack N. Wilson, Jr., District 1
J. Patrick McLaughlin, District 2
Philip L. Dumenil, District 3
Christopher M. Corchiarino, District 4

County Administrator: Todd R. Mohn, PE
Executive Assistant to County Commissioners: Margie A. Houck
County Attorney: Patrick Thompson, Esquire

March 12, 2024

The Honorable Joshua E. Kurtz
Secretary of Natural Resources
Tawes State Office Building
580 Taylor Avenue
Annapolis, MD 21401

Re: New Measures from the Atlantic State Marine Fisheries Commission (ASMFC) Limiting Atlantic Striped Bass – Opposition


Dear Secretary Kurtz,

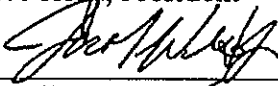
The County Commissioners of Queen Anne's County submit our opposition to the Atlantic States Marine Fisheries Commission's (ASMFC) Addendum II to Amendment 7 of the Interstate Fishery Management Plan for Striped Bass. The one fish bag limit, increased time slot and restricted season dates will negatively affect the Charter Boat Industry and the commercial gill and pound netters will have their total allocation reduced by an additional 7 percent. These regulations will affect local small business models that operate in the charter boat and commercial fishing industries as well.


Queen Anne's County's waterfront businesses will undoubtedly bear financial losses due to the restrictions. For many years, these industries have operated with restrictions in harvesting and strict regulatory compliance yet have remained in operation. The restrictions will be a point that may force good businesses to close. We respectfully request that you help safeguard this small business community.

Sincerely,

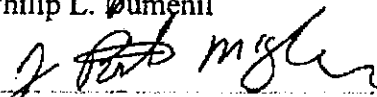
QUEEN ANNE'S COUNTY
BOARD OF COUNTY COMMISSIONERS

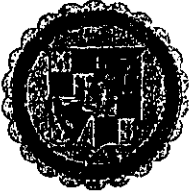

James J. Moran, President


Jack N. Wilson, Jr.


Christopher M. Corchiarino


Philip L. Dumenil


J. Patrick McLaughlin



The County Commissioners of Kent County
Ronald H. Fithian, President | Albert H. Nickerson, Member | John F. Price, Member
Shelley L. Heller, County Administrator | Thomas N. Yeager, County Attorney

March 5, 2024

The Honorable Joshua E. Kurtz
Secretary of Natural Resources
Tawes State Office Building
580 Taylor Ave
Annapolis, MD 21401

Re: New Measures from the Atlantic States Marine Fisheries Commission (ASMFC) to Limit Atlantic Striped Bass - Letter of Opposition

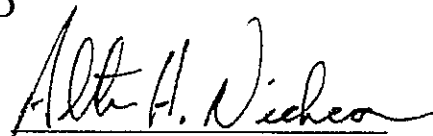
Dear Secretary Kurtz:

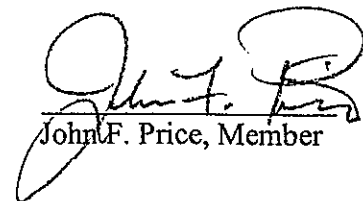
We, the County Commissioner of Kent County, Maryland, submit our opposition to the Atlantic States Marine Fisheries Commission's (ASMFC) Addendum II to Amendment 7 of the Interstate Fishery Management Plan (FMP) for Atlantic Striped Bass. We are frustrated with the 1-fish bag limit, the increased slot limit, and the restricted season dates which will negatively affect the Charter Boat Industry. Also, the commercial gill and pound netters will have their total allocation reduced by an additional 7%. These regulations will gravely affect local small business models that operate in the charter boat and commercial fishing industries.

Our constituents are already reporting cancellations and reductions in reserved trips. The economic impact on our County and its waterfront businesses will bear financial losses and erode the economic growth we have worked so hard to develop. For many years, these industries have operated with reductions in harvesting and strict regulatory compliance, yet they have remained in operation. This year's restrictions are the tipping point that will unquestionably force good businesses to close their doors. We respectfully request your assistance to help safeguard the small business community. Kent County is open for business, and we want to keep it that way.

Sincerely,
THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND


Ronald H. Fithian, President


Albert H. Nickerson, Member

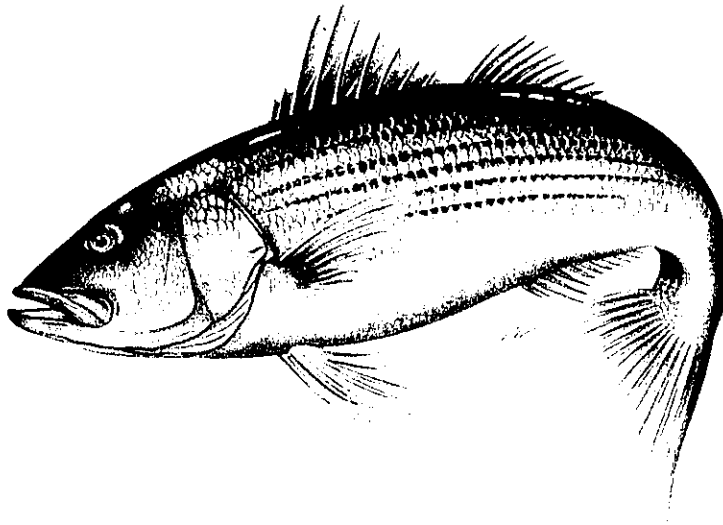

John F. Price, Member

cc: Governor Westley W. Moore
The Honorable Stephen S. Hershey
The Honorable Jay A. Jacobs
The Honorable Steven J. Arentz
The Honorable Jefferson L. Ghrist

Exhibit N

ASMFC Review of Interstate FMP for Atlantic Striped Bass

ATLANTIC STATES MARINE FISHERIES COMMISSION
REVIEW OF THE INTERSTATE FISHERY MANAGEMENT PLAN
FOR ATLANTIC STRIPED BASS
(Morone saxatilis)
2022 FISHING YEAR



Approved
August 2023



Sustainable and Cooperative Management of Atlantic Coastal Fisheries

Tables 13a-13c. Total removals in numbers of fish (harvest plus discards/release mortality) of Atlantic striped bass by sector in numbers of fish for 2017, 2020, 2021, and 2022. Harvest is from state compliance reports/MRIP (Query June 2023), discards/release mortality is from ASMFC. Estimates exclude inshore harvest from North Carolina.

Table 13a. Coastwide removals in numbers of fish for 2017 and 2020-2022.

	Commercial		Recreational		Total	
	Commercial Removals	% Change from 2017	Recreational Removals	% Change from 2017	Total Removals	% Change from 2017
2017	691,471	-	6,359,021	-	7,050,492	-
2020	641,711	-7%	4,470,204	-30%	5,111,915	-27.5%
2021	729,883	+6%	4,425,690	-30%	5,155,573	-27%
2022	680,615	-2%	6,121,867	-4%	6,802,681	-3.5%

Table 13b. Ocean removals in numbers of fish for 2017 and 2020-2022.

	Commercial		Recreational		Total	
	Commercial Removals	% Change from 2017	Recreational Removals	% Change from 2017	Total Removals	% Change from 2017
2017	211,924	-	4,344,953	-	4,556,877	-
2020	115,044	-46%	2,966,848	-32%	3,081,891	-32%
2021	133,569	-37%	3,373,924	-22%	3,507,493	-23%
2022	129,295	-39%	5,099,654	+17%	5,228,950	+15%

Table 13c. Chesapeake Bay removals in numbers of fish for 2017 and 2020-2022.

	Commercial		Recreational		Total	
	Commercial Removals	% Change from 2017	Recreational Removals	% Change from 2017	Total Removals	% Change from 2017
2017	479,547	-	2,014,068	-	2,493,615	-
2020	526,667	+10%	1,503,357	-25%	2,030,024	-19%
2021	596,314	+24%	1,051,766	-48%	1,648,080	-34%
2022	551,520	+15%	1,022,212	-49%	1,573,732	-37%

Note: Some states chose a less than 18% commercial quota reduction in exchange for a greater than 18% reduction in recreational removals in their CE plans.

Exhibit O

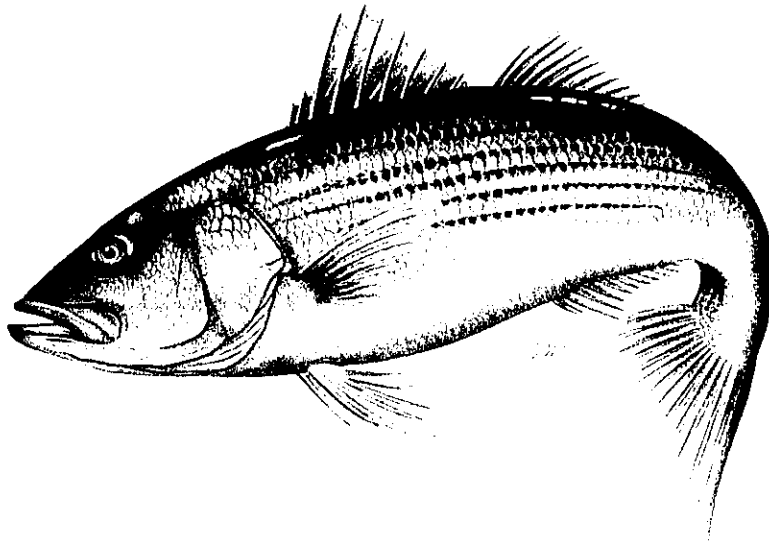
Draft Addendum II to Amendment 7 to the Interstate FMP for Atlantic Striped Bass

Draft Document for Public Comment

Atlantic States Marine Fisheries Commission

**DRAFT ADDENDUM II TO AMENDMENT 7
TO THE INTERSTATE FISHERY MANAGEMENT PLAN
FOR ATLANTIC STRIPED BASS**

Interim Management Measures



October 2023



Sustainable and Cooperative Management of Atlantic Coastal Fisheries

Draft Document for Public Comment

overfished and experiencing overfishing in the terminal year (2017)³. Following the implementation of new management measures in 2020, the 2022 Stock Assessment Update found that the stock was no longer experiencing overfishing in 2021 ($F = 0.14$, below the threshold of 0.20 and the target of 0.17) but remained overfished (Female SSB = 143 million pounds, below both the target of 235 million pounds and the threshold of 188 million pounds) (Figures 1 and 2). These reference points were calculated using the “low recruitment assumption” (per Amendment 7’s requirement under a tripped recruitment trigger), which resulted in a lower, more conservative F target and threshold compared to the 2018 benchmark assessment. Although below the threshold and considered overfished, female SSB in 2021 was still estimated to be more than three-times of that during the early 1980s, when the stock was considered collapsed (Figure 1).

The assessment also indicated a period of strong recruitment (numbers of age-1 fish entering the population) from 1994–2004, followed by a period of low recruitment from 2005–2011 (although not as low as the period of stock collapse in the early 1980s) (Figure 1). This period of low recruitment contributed to the decline in SSB that the stock has experienced since 2010. Recruitment of age-1 fish was high in 2012, 2015, 2016, and 2019 (corresponding to strong 2011, 2014, 2015, and 2018 year classes, respectively); however, estimates of age-1 striped bass were below the long-term average in 2018, 2020, and 2021.

The 2022 assessment also included short-term projections to determine the probability of SSB being at or above the SSB target by 2029. These projections also used the low recruitment assumption, which restricts the estimates of age-1 recruitment to those occurring during 2008–2021, rather than the longer time series of 1993–2021. These projections indicated that under the 2021 fishing mortality rate, there was a 97% probability the stock will be rebuilt by 2029 (Figure 3).

However, concerns over high recreational removals in 2022 compared to 2021 (the terminal year of the most recent assessment update) prompted the Board to request updated stock projections using 2022 preliminary removals. These estimates of preliminary 2022 removals and updated stock projections were presented to the Board in May 2023. The data showed that while commercial removals in 2022 were similar to those in 2021, recreational harvest had increased 88% and recreational live releases by 3%, resulting in an overall 38% increase in recreational removals (relative to 2021). These 2022 removals were used to estimate F in 2022. Since striped bass catch and F rates vary from year-to-year (even under the same regulations), the average F from 2019-2022 (excluding 2020 due to uncertainty associated with COVID-19 impacts) was applied to 2023-2029 in the new projections. Under this F rate, the new projections estimate the probability of rebuilding SSB to its target by 2029 drops from 97% to 15% (Figure 3).

It should be noted that these projections are not the same as a full stock assessment update where the model would be re-run to include the 2022 catch-at-age and index data. Accordingly, the status of the stock remains overfished but is not experiencing overfishing as per the 2022 stock assessment update.

³ NEFSC. 2019. Summary Report of the 66th Northeast Regional Stock Assessment Review Committee (SARC 66), Northeast Fisheries Science Center, Woods Hole, MA. 40p.

Exhibit P

Congressional Ratification I (1942)

[CHAPTER 283]

AN ACT

Granting the consent and approval of Congress to an interstate compact relating to the better utilization of the fisheries (marine, shell, and anadromous) of the Atlantic seaboard and creating the Atlantic States Marine Fisheries Commission.

May 4, 1942
[H. R. 6020]
[Public Law 539]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent and approval of Congress is hereby given to an interstate compact (which shall be operative for not more than fifteen years from the date of the enactment of this Act) relating to the better utilization of the fisheries (marine, shell, and anadromous) of the Atlantic seaboard and creating the Atlantic States Marine Fisheries Commission, negotiated and entered into or to be entered into under the authority of Public Resolution Numbered 79, Seventy-sixth Congress, approved June 8, 1940, and now ratified by the States of Maine, New Hampshire, Massachusetts, Rhode Island, New York, New Jersey, Delaware, Maryland, and Virginia, which compact reads as follows:

Interstate fisheries compact, Atlantic seaboard.

Atlantic States Marine Fisheries Commission.

54 Stat. 261.
16 U. S. C. § 667a.

"The contracting states solemnly agree:

"ARTICLE I

"The purpose of this compact is to promote the better utilization of the fisheries, marine, shell and anadromous of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause. It is not the purpose of this compact to authorize the states joining herein to limit the production of fish or fish products for the purpose of establishing or fixing the price thereof, or creating and perpetuating monopoly.

Purpose of compact.

"ARTICLE II

"This agreement shall become operative immediately as to those states executing it whenever any two or more of the states of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida have executed it in the form that is in accordance with the laws of the executing state and the Congress has given its consent. Any state contiguous with any of the aforementioned states and riparian upon waters frequented by anadromous fish, flowing into waters under the jurisdiction of any of the aforementioned states, may become a party hereto as hereinafter provided.

Operation of agreement.

States eligible to become parties.

"ARTICLE III

"Each state joining herein shall appoint three representatives to a Commission hereby constituted and designated as the Atlantic States Marine Fisheries Commission. One shall be the executive officer of the administrative agency of such state charged with the conservation of the fisheries resources to which this compact pertains or, if there be more than one officer or agency, the official of that state named by the governor thereof. The second shall be a member of the legislature of such state designated by the Commission or Committee on Interstate Cooperation of such state, or if there be none, or if said Commission on Interstate Cooperation cannot constitutionally designate the said member, such legislator shall be designated by the governor thereof; provided, that if it is constitutionally impossible to appoint a legislator as a commissioner from such state, the second member shall be appointed by the governor of said state in his discretion. The third shall be a citizen who shall have a knowl-

State representation on Commission.

edge of and interest in the marine fisheries problem, to be appointed by the governor. The Commission shall be a body corporate with the powers and duties set forth herein.

“ARTICLE IV

Inquiry respecting conservation, etc.

“The duty of the said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Atlantic seaboard. The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the aforementioned states.

Coordination of police powers.

Recommendations to governors and legislatures.

“To that end the Commission shall draft and, after consultation with the Advisory Committee hereinafter authorized, recommend to the governors and legislatures of the various signatory states legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Atlantic seaboard. The Commission shall, more than one month prior to any regular meeting of the legislature in any signatory state, present to the governor of the state its recommendations relating to enactments to be made by the legislature of that state in furthering the intents and purposes of this compact.

Consultations.

“The Commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable.

Stocking of waters with fish and fish eggs.

“The Commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs, or joint stocking by some or all of the states party hereto, and when two or more of the states shall jointly stock waters the Commission shall act as the coordinating agency for such stocking.

“ARTICLE V

Organization.

“The Commission shall elect from its number a Chairman and a Vice Chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect, and shall fix and determine their duties, qualifications and compensation. Said Commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

Offices.

“ARTICLE VI

Actions in regard to its general affairs.

“No action shall be taken by the Commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states present at any meeting. No recommendation shall be made by the Commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The Commission shall define what shall be an interest.

“ARTICLE VII

Fish and Wildlife Service.

“The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Atlantic States Marine Fisheries Commission,

cooperating with the research agencies in each state for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the Commission.

"An Advisory Committee to be representative of the commercial fishermen and the salt water anglers and such other interests of each state as the Commission deems advisable shall be established by the Commission as soon as practicable for the purpose of advising the Commission upon such recommendations as it may desire to make.

Advisory Committee.

"ARTICLE VIII

"When any state other than those named specifically in Article II of this compact shall become a party thereto for the purpose of conserving its anadromous fish in accordance with the provisions of Article II the participation of such state in the action of the Commission shall be limited to such species of anadromous fish.

Other participants.

"ARTICLE IX

"Nothing in this compact shall be construed to limit the powers of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state imposing additional conditions and restrictions to conserve its fisheries.

Powers of signatory State.

"ARTICLE X

"Continued absence of representation or of any representative on the Commission from any state party hereto shall be brought to the attention of the governor thereof.

Continued absence of representation.

"ARTICLE XI

"The states party hereto agree to make annual appropriations to the support of the Commission in proportion to the primary market value of the products of their fisheries, exclusive of cod and haddock, as recorded in the most recent published reports of the Fish and Wildlife Service of the United States Department of the Interior, provided no state shall contribute less than two hundred dollars per annum and the annual contribution of each state above the minimum shall be figured to the nearest one hundred dollars.

Contributions of compacting States.

"The compacting states agree to appropriate initially the annual amounts scheduled below, which amounts are calculated in the manner set forth herein, on the basis of the catch record of 1938. Subsequent budgets shall be recommended by a majority of the Commission and the cost thereof allocated equitably among the states in accordance with their respective interests and submitted to the compacting states.

"SCHEDULE OF INITIAL STATE CONTRIBUTIONS

"Maine.....	\$700	Delaware.....	\$200
New Hampshire.....	200	Maryland.....	700
Massachusetts.....	2,300	Virginia.....	1,300
Rhode Island.....	300	North Carolina.....	600
Connecticut.....	400	South Carolina.....	200
New York.....	1,300	Georgia.....	200
New Jersey.....	800	Florida.....	1,500

"ARTICLE XII

"This compact shall continue in force and remain binding upon each compacting state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other states party hereto."

Duration.

Consent and approval of Congress.

SEC. 2. Without further submission of said compact, the consent and approval of Congress is hereby given to the States of Connecticut, North Carolina, South Carolina, Georgia, and Florida, and for the purpose of the better utilization of their anadromous fisheries, to the States of Vermont and Pennsylvania, to enter into said compact as signatory States and as parties thereto, in addition to the States which have now ratified the compact.

Report to Congress.

SEC. 3. The Atlantic States Marine Fisheries Commission constituted by the compact shall make an annual report to Congress not later than sixty days after the beginning of each regular session thereof. Such report shall set forth the activities of the Commission during the calendar year ending immediately prior to the beginning of such session.

Right reserved.

SEC. 4. The right to alter, amend, or repeal the provisions of sections 1, 2 and 3 is hereby expressly reserved.

Approved, May 4, 1942.

Exhibit Q

Congressional Ratification II (1950)

entitled on account of previous service rendered to the United States or District of Columbia governments.”

Approved August 19, 1950.

[CHAPTER 763]

AN ACT

Granting the consent and approval of Congress to an amendment to the Atlantic States Marine Fisheries Compact, and repealing the limitation on the life of such compact.

August 19, 1950
[H. R. 7887]
[Public Law 721]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent and approval of Congress is hereby given to an amendment to the Atlantic States Marine Fisheries Compact, as consented to in Public Law 539, Seventy-seventh Congress (56 Stat. 267), which amendment has now been ratified by the States of Maine, New Hampshire, Massachusetts, Rhode Island, Pennsylvania, and North Carolina and reads substantially as follows:

Atlantic States Marine Fisheries Compact, amendment.

“AMENDMENT NUMBER 1

“The States consenting to this amendment agree that any two or more of them may designate the Atlantic States Marine Fisheries Commission as a joint regulatory agency with such powers as they may jointly confer from time to time for the regulation of the fishing operations of the citizens and vessels of such designating States with respect to specific fisheries in which such States have a common interest. The representatives of such States on the Atlantic States Marine Fisheries Commission shall constitute a separate section of such Commission for the exercise of the additional powers so granted provided that the States so acting shall appropriate additional funds for this purpose. The creation of such section as a joint regulatory agency shall not deprive the States participating therein of any of their privileges or powers or responsibilities in the Atlantic States Marine Fisheries Commission under the general compact.”

Joint regulatory agency.

SEC. 2. Without further submission of such amendment to the Atlantic States Marine Fisheries Compact, the consent and approval of Congress is hereby given to the States of Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, South Carolina, Georgia, and Florida, now parties to the Atlantic States Marine Fisheries Compact, and to the State of Vermont when it shall enter such compact for the purpose of the better utilization of its anadromous fisheries, to enter into such amendment as signatory States and as parties thereto, in addition to the States which have now ratified the amendment.

Consent of Congress.

SEC. 3. The first section of Public Law 539 of the Seventy-seventh Congress (56 Stat. 267) is hereby amended by striking out “(which shall be operative for not more than fifteen years from the date of the enactment of this Act)”: *Provided,* That nothing in this compact shall be construed to limit or add to the powers or the proprietary interest of any signatory State or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by a signatory State imposing additional conditions and restrictions to conserve its fisheries.

SEC. 4. The right to alter, amend, or repeal the provisions of this Act is hereby expressly reserved.

Approved August 19, 1950.

Exhibit R

North Carolina Office of Attorney General Advisory Opinion



Attorney General

Josh Stein

Constituionality of the Atlantic Coastal Fisheries Cooperative Act

March 26, 1996

Senator Charlie Albertson Representative Jonathan Robinson Co-Chairs, Legislative Research Commission
Committee to Study Withdrawal from the Atlantic States Marine Fisheries Compact Legislative Office Building
Raleigh, North Carolina

Re: Advisory Opinion; Constitutionality of the Atlantic Coastal Fisheries Cooperative Act; 16

U.S.C. §§ 5101 et seq.

Dear Co-Chairmen:

We have carefully reviewed the questions presented in your letter dated 22 February, 1996. In the course of our examination, we have also consulted with the Executive Director of the Atlantic States Marine Fisheries Commission (hereinafter ASMFC) and with Messrs. Berkley and Davis, the trial counsel for the North Carolina Fisheries Association, to obtain their respective opinions about the constitutionality of the Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 et seq. (hereinafter Atlantic Coastal Act). From our research, we offer the following Advisory Opinion in reply to the questions presented in your letter. The Advisory Opinion is divided into two parts. In the first section, we present summary answers to your questions. In the second part, we provide a detailed explanation of the reasoning and analysis leading to our reply.

Summary of Opinion

1. "Did the Atlantic Coastal Fisheries Cooperative Management Act expand the powers of the ASMFC as established in the interstate compact approved by the Congress in 56 Stat. 267 (1942) and by 64 Stat. 467 (1950)?"
2. Reply: Yes. The powers conferred on the ASMFC by the interstate compact approved by Congress were limited to making recommendations to the member states, unless the states expressly consented to ASMFC binding regulations. The Atlantic Coastal Act enacted by Congress in 1993 expanded the ASMFC's power to make its decisions binding on the states, as defined in the Act, without the consent of the states.
1. "Did the Atlantic Coastal Fisheries Cooperative Management Act alter the purposes of the ASMFC as established in the interstate compact approved by the Congress?"

Reply: Yes. The original purpose of the ASMFC was to establish a cooperative, voluntary fisheries management program. Pursuant to Amendment No. 1 of the Compact approved by Congress in 1950, member states could choose to designate the ASMFC as a joint regulatory agency "for the regulation of the fishing operations of the citizens and vessels of such designation states with respect to specific fisheries in which such states have a common interest." The original purpose of establishing a means for the voluntary and cooperative regulation of fisheries by the member states was changed by Congress when it enacted the Atlantic Coastal Act. That Act empowered the ASMFC to make binding decisions, enforceable against the states through sanctions levied by the United States Secretary of Commerce, even when there has been no determination by the states to join in a particular regulatory program.

3. "If Congress altered the powers and/or purposes of the ASMFC by adoption of the Atlantic Coastal Fisheries Cooperative Management Act, did adoption of the Act thereby violate limitations imposed by the U.S. Constitution on Congress in the adoption of statutes? In particular, did the adoption of the Act violate the Compact Clause or the Tenth Amendment?"

Reply: This question cannot be answered with certainty. The constitutional provisions at issue are complex and have been the subject of shifting interpretation by the U.S. Supreme Court.

(a)

Compact Clause. If the Congress was authorized to adopt the Atlantic Coastal Act through the Commerce Clause, it is unlikely the Compact Clause was violated when Congress amended the powers and purposes of the ASMFC through adoption of the Atlantic Coastal Act without the consent of the member states. The Congress is not prohibited by its ratification of a compact from using its Commerce Clause power to adopt new statutes in areas covered by compacts and which affect members of compacts. The Atlantic Coastal Act would likely be held to be such a statute; it established the federal power to regulate migratory fish stocks and conferred the power on a pre-existing compact-created agency, the ASMFC. Regulating the harvesting of migrating stocks of fish is probably within Congress' power under the Commerce Clause.

(b)

Tenth Amendment. In *New York v. United States*, 505 U.S. 144 (1992), the Supreme Court held that Congress cannot commandeer the states by compelling the adoption of laws or rules to carry out its policies, thereby avoiding the political consequences of its decisions. The Atlantic Coastal Act treads closely to that line. Because it treads so closely to the limits of the Tenth Amendment, it is possible the Court would apply its *New York* holding to find the Act was adopted in violation of the Tenth Amendment.

Two practical considerations might cause the courts not to apply the *New York* holding to the Atlantic Coastal Act. Experience has confirmed the interjurisdictional fisheries cannot be managed effectively without a federally empowered agency able to control the states, or fishermen licensed by states. The Congressional history of the Atlantic Coastal Act, as well as its "Findings and Purpose" section, make that fact indisputable. Additionally, the history of the Act shows the states sought this form of regulation instead of direct control by the traditional federal fisheries management agency, the Department of Commerce.

Analysis and Discussion The Atlantic States Marine Fisheries Compact (hereinafter referred to as the Compact), which created the ASMFC, was approved by the Congress in 1942. North Carolina joined the Compact in 1949. 1949 N.C. Sess. Laws ch. 1086. The Congress approved the only amendment of the Compact in 1950.

The original Compact defined the role of the ASMFC as (1) the preparation and submission of recommendations to "the governors and legislatures of the various signatory state legislatures,"

(2) providing consultation and advice "to the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend[ing] the adoption of such regulations as it deems advisable," and (3) "recommend[ing] to the states party hereto the stocking of the waters of such states with fish and fish eggs . . ." See Compact, Article V. No provision of the Compact made the actions of the ASMFC binding or enforceable against the states without their individual consent and affirmative action. By the Compact, the ASMFC had no power or authority over non-member states.

The 1950 amendment of the Compact allowed, but did not require, the states to designate the ASMFC as a joint regulatory agency for consenting states. In that capacity, the ASMFC exercises the regulatory authority of the consenting states. It, however, was granted no independent regulatory power by the amendment.

The Atlantic Coastal Act radically changed the powers of the ASMFC. These new powers are derived from the Act, and thus are powers of the United States conferred on the ASMFC by the Congress. They include, e.g., the power to "specify conservation and management actions to be taken by the States [regardless of whether the state is a compact member]; to "specify the requirements necessary for States to be in compliance with the [ASMFC] plan"; to "identify each State that is required to implement and enforce that plan"; to determine, at least annually, whether each "State is effectively implementing and enforcing each such plan"; to "determine that a State is not in compliance with the provision of a coastal fishery management plan"; and to notify the

Secretary of Commerce that a State is not in compliance with a plan. 16 U.S.C. §§ 5104; 5105. The Atlantic Coastal Act also expands the jurisdiction of the ASMFC from the management of fishing activities to include conservation of the "marine environment, in order to assure the availability of coastal fisheries resources on a long-term basis." 16 U.S.C. § 5102(4). Recently, the ASMFC proposed to use this authority to regulate states in the implementation of the Clean Water Act program, coastal development permits, and the Federal Power Act for dams or water diversion.

A determination by the ASMFC of noncompliance by a state is reviewed by the U.S. Secretary of Commerce. If the Secretary concurs in the finding of noncompliance "and finds the measures not implemented" are necessary for the conservation of the fishery in question, "the Secretary shall declare a moratorium on fishing in the fishery in question within the waters of a noncomplying State." 16 U.S.C. § 5106(c). The Secretarial moratorium is implemented against persons fishing in the state's waters. 16 U.S.C. § 5106(d)-(h). There is no direct sanction, or punishment, of the state as a state.

Thus, we conclude that the powers of the ASMFC were expanded by the Atlantic Coastal Act and the purposes of the ASMFC were altered by the Act. The ASMFC has become the agency charged by the Congress with establishing and implementing fisheries management for migratory fish stocks in waters along the Atlantic seaboard that were historically state controlled. In the discharge of that power and duty, the ASMFC is exercising the sovereignty of the United States, rather than the collective power of the subscribing states. This is plain from the ASMFC's power to order management actions by non-member states and by dissenting member states.

Congress' amendment of the powers of the ASMFC by the Atlantic Coastal Act raises two constitutional questions. First, did Congress' unilateral amendment of the powers conferred on the ASMFC by the Compact violate the Compact Clause of the United States Constitution? Second, did Congress violate the Tenth Amendment to the United States Constitution when it enacted the Atlantic Coastal Act?

Violations of Compact Clause Whether Congress' unilateral amendment of the powers of the ASMFC through enactment of the Atlantic Coastal Act violated the Compact Clause depends to a great extent on whether Congress had the power to enact the Atlantic Coastal Act under the Commerce Clause of the United States Constitution.

The Commerce Clause, Art. 1, § 8, clause 3 of the U.S. Constitution provides: "The Congress shall have Power. . . To regulate Commerce with foreign Nations, and among the several States and with the Indian Tribes." The Supreme Court's interpretation of the clause was quixotic until the late 1930's. In 1937, the Court abandoned its previously applied limits on the powers of Congress to regulate commerce and appeared to "allow Congress to do anything it wants under the commerce power." Donald H. Regan, "How to Think About the Federal Commerce Power and Incidentally Rewrite *United States v. Lopez*," 94 Michigan Law Review 554-614, 555 (1995). The first limit on the apparently limitless scope of the Commerce Clause power occurred in 1995. In *United States v. Lopez*, 115 S. Ct. 1624 (1995), the Gun-Free School Zone Act was held unconstitutional to the extent it made criminal the conduct of possessing a firearm at a school or within 1000 feet of a school. The Court held that enactment of the statute was not within the Commerce Clause power of the Congress because possession of a gun within a school zone was "in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce." *Id.* at 1634. In their concurring opinion, Justices Kennedy and O'Connor focused on the absence of any commercial character in the action or the conduct and on the fact that "education is a traditional concern of the States." *Id.* at 1640. For them, the operative test for determining the limit on the Commerce Clause power of the Congress is whether the legislation (1) concerns "an area to which States lay claim by right of history and expertise" and (2) regulates "an activity beyond the realm of commerce in the ordinary and usual sense of that term." *Id.* at 1641.

The harvest of fish from the internal waters of the States and the territorial seas of the States is an area to which the States can lay claim by right of history and expertise. The right of the states to regulate fishing has long been recognized. *Toomer v. Witsell*, 334 U.S. 385, 393-94 (1948); *The Vessel 'Abby Dodge' v. U.S.*, 223 U.S. 166, 173-74 (1912); *McCready v. Virginia*, 94 U.S. 391, 393-96 (1877). Despite that recognition of the traditional power of states, the Supreme Court has consistently recognized in dicta the power of the Congress to regulate within this field under the Commerce Clause. *Manchester v. Massachusetts*, 139 U.S. 240. 264-66

(1890) [menhaden fishing in the territorial sea]; *Douglas v. Seacoast Products, Inc.*, 431 U.S. 265, 28182 (1977) [menhaden fishing]; *Baldwin v. Montana Fish and Game Comm'n*, 436 U.S. 371, 393 (1978) [wildlife regulation]. Dictum in *Douglas* is specific to this question and likely would be applied to control the question:

While appellant may be correct in arguing that at earlier times in our history there was some doubt whether Congress had power under the Commerce Clause to regulate the taking of fish in state waters, there can be no question today that such power exists where there is some effect as interstate commerce. [citations omitted] The movement of vessels from one State to another in search of fish, and back again to processing plants, is certainly activity which Congress could conclude affects interstate commerce.

Douglas, 431 U.S. at 281-82. Another court, within the Fourth Circuit, reached the same conclusion regarding the harvest of blue crabs from Chesapeake Bay.

This dictum [from *Douglas*] clearly indicates that if Congress had chosen to regulate the crab industry it would have the power to do so under the Supreme Court's view of the Commerce clause, the language of *McCready* regarding the planting of corn notwithstanding.

Tangier Sound Watermen's Assoc. v. Douglas, 541 F. Supp. 1287, 1304 (E.D. Va. 1982).

Based on these cases, we conclude that under the *Lopez* test the Atlantic Coastal Act will likely be held to be an act adopted within the Commerce Clause power of the Congress.

The Compact Clause of Art. I, § 10, clause 3 of the U.S. Constitution provides: "No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State, or with a foreign power . . ." The Supreme Court has construed the clause on numerous occasions.

The enlarged powers and duties granted to the ASMFC under the Atlantic Coastal Act effectively amended the Compact by converting an advisory body with regulatory powers by consent into a regulatory body which required no consent to regulate the states. Our research discloses no case which determined the law concerning the power of the Congress to unilaterally amend a compact. However, three federal courts have discussed the question in dicta. From their discussion and our own analysis, we conclude that the Congress cannot unilaterally alter, amend, or repeal its approval of compacts after the fact. See *Mineo v. Port Authority of N.Y. and N.J.*, 779 F.2d 939, 948 (3rd Cir. 1985), cert. denied, 478 U.S. 1005 (1986); *Tobin v. United States*, 306 F.2d 270, 272-73 (D.C. Cir.), cert. denied, 371 U.S. 902 (1962); *Riverside Irrigation Dist. v. Andrews*, 568 F. Supp. 583, 589-90 (D. Colo. 1983), aff'd, 758 F.2d 508 (10th Cir. 1985).

However, congressional approval of a compact does not bar the Congress from adopting laws that impair or impact the subject area of compacts. *Riverside*, 568 F. Supp. at 589. Compacts do not "operate as a restriction upon the power of congress under the constitution to regulate commerce among the several states." *Pennsylvania v. Wheeling and Belmont Bridge Co.*, 59

U.S. 421, 433 (1855). A subsequent federal law of nationwide applicability is enforceable even if it affects a prior compact. *Riverside*, 568 F. Supp. at 590. Accordingly, the Congress likely did not violate the Compact Clause power when it enacted the Atlantic Coastal Act and enlarged the powers of the compact-created ASMFC so long as it acted to implement its powers under the Commerce Clause. Because we conclude that the Atlantic Coastal Act likely lies within Congress' power under the Commerce Clause, it is unlikely that a Compact Clause violation would be found by a reviewing court.

Tenth Amendment The Tenth Amendment to the U.S. Constitution provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Like the Commerce Clause, the Tenth Amendment has had a mercurial history. After effectively declaring it dead in 1985, the Court revived it in 1992. In *New York v. U.S.*, 505 U.S. 144 (1992), the Court applied the Tenth Amendment to strike down the "take title" provision of the Low-Level Radioactive Waste Policy Amendments Act of 1985. In reaching that decision, the Court applied a three-part test: First, does the statute regulate states as states; second, does the statute "commandeer state governments into the service of

federal regulatory purposes," in the place of the Congress by a requirement to enact laws or rules; third, are sanctions in the statute by which the state is commandeered directed at the state instead of its citizens as individuals.

The Atlantic Coastal Act clearly meets the first two criteria. The only entities required to act in response to ASMFC dictates are states. The purpose of the statute is to commandeer state regulatory agencies to implement by the adoption of laws or rules a federal program created by the ASMFC under authority of the Atlantic Coastal Act as the agent of the Congress. However, the sanction for fisheries management violation of the Act does not fall directly on the states. Instead, upon violation the Secretary promulgates regulations closing the state's waters to fishing if conservation is deemed necessary within the waters of the state. 16 U.S.C. § 5106(d). The regulations are directed at and control the harvest of fish, an activity by persons and not "the state." 16 U.S.C. § 5106(e)-(g).

In a 1993 opinion striking the Forest Resources Conservation and Shortage Relief Act, the Ninth Circuit Court of Appeals rejected arguments by the United States Department of Justice that the New York decision is always inapplicable when the statute provides for no sanction against the state. *Board of Natural Resources v. Brown*, 992 F.2d 937, 947 (9th Cir. 1993). Two factors suggest that the absence of direct sanctions against the states under the Atlantic Coastal Act may not insulate it from Tenth Amendment challenges. For that reason, New York and its subsequent interpretations must be examined to determine whether the absence of direct regulation of the states by states would defeat a Tenth Amendment claim.

First, the New York Court held that statutes should be rejected which have the effect of transferring political accountability, through public disapproval, from federal officials to state officials. The crux of the question becomes whether "the federal officials who devised the regulatory program may remain insulated from the electoral ramifications of their decision." *New York*, 505 U.S. at 169. Like the "take title" for hazardous waste provision at issue in the New York case, the sanction applicable under the Atlantic Coastal Act extends beyond the immediate community and affects the general welfare of the state. The prohibition on harvest will affect many more fishermen and citizens than those fishermen who would be regulated if the state implemented the federal policy. The likely result will be for the public to assign fault for the additional regulations to state, not federal, authorities. Should the Court so find, the Atlantic Coastal Act could be held unconstitutional under the New York decision.

Secondly, and more significantly, is the New York Court's discussion of the "variety of methods, short of outright coercion, by which Congress may urge a State to adopt a legislative program consistent with federal interests." *New York*, 505 U.S. at 166. Of the two means of incentives examined in *New York*, the second is relevant to this inquiry: "where Congress has the authority to regulate private activity under the Commerce Clause, we have recognized Congress' power to offer States the choice of regulating that activity according to federal standards or having state law pre-empted by federal regulation." *Id.* at 167. In *New York*, Justice O'Connor distinguished two prior decisions involving statutes which gave states the option to adopt federal policies and implement them or allow the federal government to run the program. *New York*, 505 U.S. at 161, citing *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264, 288 (1981) and *FERC v. Mississippi*, 456 U.S. 742, 761-62 (1982). No such option is presented by the Atlantic Coastal Act. There is no authority for any federal entity, including the ASMFC, to implement the recommendations of an ASMFC fisheries management plan. The sole implementing authorities are the states. Consequently, it appears that the Act does not contain the types of incentives previously found by the courts to be acceptable. The only "incentive" for the states to adopt laws or rules implementing federal fisheries management policies is to avoid the sanction of closure of the total fishery, regardless of whether such action is required to support the affected fishery. The Secretary is without the power to merely implement the recommended measures in the non-compliant state. The only option is the more draconian total moratorium. Under *New York* then, the principal question becomes whether Congress' method of holding out incentives (a possible fishing moratorium) to influence state fisheries management policies is valid. Under the Supreme Court's analysis in *New York*, the method of effectuating federal policy set out in the Atlantic Coastal Act appears to not be within the scope of previously recognized means whereby Congress may legitimately influence states to achieve federal policy goals. If *New York* is appropriately applicable in the present context, it appears the Atlantic Coastal Act will likely violate the Tenth Amendment.

However, we are concerned that two practical considerations might cause the courts not to apply the New York holding to the Atlantic Coastal Act. Experience has confirmed the interjurisdictional fisheries cannot be managed effectively without a federally empowered agency able to control the states, or fishermen licensed by states. The Congressional history of the Atlantic Coastal Act, as well as its "Findings and Purpose" section, make that fact indisputable as a matter of law. Additionally, the history of the Act shows the states sought this form of regulation instead of direct control by the traditional federal fisheries management agency, the Department of Commerce.

Daniel C. Oakley Senior Deputy Attorney General

Daniel F. McLawhorn

Special Deputy Attorney General

« Exceptions to Statutory Exemptions for Execution of Judgment on Criminal Restitution Orders

Application of Stormwater Utility Fees to State Property »

Main Campus

114 West Edenton Street
Raleigh, NC 27603

p: (919) 716-6400

f: (919) 716-6750

State Crime Laboratory

121 East Tryon Road
Raleigh, NC 27603

p: (919) 582-8700

f: (919) 662-4475

Triad Regional

State Crime Laboratory

2306 West Meadowview Road
Suite 110
Greensboro, NC 27047

p: (336) 315-4900

f: (336) 315-4956

Western Regional

State Crime Laboratory

300 Saint Pauls Road
Hendersonville, NC 28792

p: (828) 654-0525

f: (828) 654-9682

NC Justice Academy

Salemburg Campus:

PO Box 99
Salemburg, NC 28385

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NC Justice Academy

Edneyville Campus:

PO Box 600
Edneyville, NC 28727

p: (828) 685-3600

f: (828) 685-6933

Sheriffs' Standards Division

PO Box 629
Raleigh, NC 27602

p: (919) 779-8213

f: (919) 662-4515

Criminal Justice

Standards Division

PO Drawer 149
Raleigh, NC 27602

p: (919) 661-5930

f: (919) 779-8210

Exhibit S

ASMFC 2023 Annual Report



Atlantic States Marine Fisheries Commission

2023

Annual Report

Commissioners

MAINE

Patrick C. Keliher
Rep. Allison Hepler
Stephen R. Train

NEW HAMPSHIRE

Cheri Patterson
Sen. David H. Watters
Douglas Grout

MASSACHUSETTS

Dan McKiernan
Rep. Sarah K. Peake
Raymond W. Kane

RHODE ISLAND

Jason McNamee, Ph.D.
Sen. Susan Sosnowski
David V.D. Borden

CONNECTICUT

Justin Davis, Ph.D.
Rep. Joseph Gresko
William Hyatt

NEW YORK

Marty Gary
Assy. Fred Thiele
Emerson C. Hasbrouck, Jr.

NEW JERSEY

Joseph Cimino, Vice-Chair
Sen. Vin Gopal
Jeff Kaelin

PENNSYLVANIA

Timothy D. Schaeffer, Ph.D.
Rep. Anita Kulik
Loren W. Lustig

DELAWARE

John Clark
Rep. William J. Carson
Roy W. Miller

MARYLAND

Lynn Waller Fegley
Del. Dana Stein
H. Russell Dize

VIRGINIA

Jamie Green
Sen. Monty Mason
J. Bryan Plumlee

NORTH CAROLINA

Kathy Rawls
Rep. Michael Wray
Jerry A. Mannen

SOUTH CAROLINA

Mel Bell
Sen. Ronnie W. Cromer
Dr. Malcolm Rhodes

GEORGIA

Doug Haymans
Rep. Trey Rhodes
A.G. "Spud" Woodward, Chair

FLORIDA

Jessica McCawley
Rep. Thad Altman
Gary Jennings



OUR MISSION

To promote cooperative management of fisheries - marine, shell, and diadromous - of the Atlantic coast of the United States by the protection and enhancement of such fisheries, and by the avoidance of physical waste of the fisheries from any cause.

Atlantic States Marine Fisheries Commission
Condensed Statement of Activities Information
For the Years Ended June 30, 2023 and 2022

	2023	2022
REVENUE:		
Contract reimbursements	\$ 51,087,652	\$ 96,930,614
Contributions from member states	733,446	733,444
Annual Meeting fees	17,810	-
Other	(9,799)	(17,138)
Total Revenue	51,829,109	97,646,920
EXPENSES:		
CARES Act pass through	17,814,651	78,170,560
Salaries and fringe benefits	6,851,313	6,614,893
Subcontracts	16,138,742	11,188,746
Travel	1,048,874	571,199
Disaster Relief Expense	8,742,887	-
Other	841,758	848,124
Total Expenses	51,438,225	97,393,522
OTHER INCOME (EXPENSES):		
Interest rate swap obligation adjustment	-	-
Total Other Income (Expenses)	-	-
CHANGE IN NET ASSETS	390,884	253,398
NET ASSETS, BEGINNING OF YEAR	5,254,992	5,001,594
NET ASSETS, END OF YEAR	\$ 5,645,876	\$ 5,254,992

Exhibit T

Letter of East Coast Fishing Coalition

East Coast Fishing Coalition

March 27, 2024

Capt. Brian Hardman
President
Maryland Charter Boat Association
8339 Bay Crest Ct.
Chesapeake Beach, MD 20732

Dear Capt. Hardman,

I hope this letter finds you well. As President of the East Coast Fishing Coalition (ECFC), I am writing to convey our full support for the Federal lawsuit initiated by the Maryland Charter Boat Association against the Atlantic States Marine Fisheries Commission (ASMFC). Our coalition proudly represents over 800 for-hire charter and party boats across Connecticut, Rhode Island, Massachusetts, New York, New Jersey, and Maryland.

Upon reviewing the details of the lawsuit, particularly regarding the ASMFC's actions during their January 24, 2024 meeting concerning striped bass regulations, it is evident that the ASMFC's decisions have resulted in immediate economic harm to our member captains and their families. We share in your concerns, as these actions threaten not only the present viability of our businesses but also the long-term sustainability of the for-hire sector of the fishing industry.

If these decisions are not rectified, we anticipate a significant decline in business that will persist well into the future. The ramifications also extend beyond our industry, impacting businesses such as hotels, restaurants, tackle shops, and other merchants that rely on our operations to sustain their own livelihoods.

Therefore, the East Coast Fishing Coalition stands firmly behind the Maryland Charter Boat Association's lawsuit. We believe that addressing the issues outlined in your legal action is paramount to safeguarding the interests of our industry and the broader coastal economy. Additionally, we are currently exploring our own legal options to further support this action.

Thank you, Captain Hardman, for your leadership in pursuing this matter of critical importance. Please do not hesitate to reach out if there are any further actions or collaborations that would be beneficial in our shared pursuit of a fair and sustainable regulatory framework.

Sincerely,

Captain Marc Berger
President
East Coast Fishing Coalition