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March 15, 2013

The Honorable John D. Rockefeller IV
531 Hart Senate Office Building
Washington, DC 20510

Dear Senator Rockefeller;

Thank you for inviting me to testify before the Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard. I will be attending the hearing on "Developments and Opportunities in U.S. Fisheries Management" on March 19, 2013. Attached is my testimony for your review entitled "State-by-State Allocations of Commercial Fisheries Quota and the Impact on New York Fisheries". I look forward to meeting the subcommittee.

Sincerely,

Emerson C. Hasbrouck
Marine Program Director Emeritus
Senior Natural Resources Specialist

cc: Senator Mark Begich

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Testimony to the Senate Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard
"Developments and Opportunities in U.S. Fisheries Management"

State-By-State Allocation of Commercial Fisheries Quota and the Impact on New York Fisheries

By
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BACKGROUND

There are currently six species in the Mid-Atlantic being managed on a state-by-state quota allocation system. One of these species, striped bass, is only allowed to be harvested in state waters and will thus not be included in the discussion of this testimony. The other five species are: summer flounder (also known as fluke); black sea bass; bluefish; scup; and spiny dogfish. The state-by-state quota allocation for these species is each based on its own baseline time period during the late 1970's, the 1980's and early 1990's. See Table 1.

Species	Baseline Years
Fluke	1980-1989
Scup	1983-1992
Black Sea Bass	1983-1992
Bluefish	1981-1989
Spiny Dogfish	1990-1997

Table 1 – Baseline Period for Each Species

The reported commercial landings during the baseline period for each species, for each state, provides basis for the percent allocation to each state of the total commercial annual quota. The state-by-state allocations for these five species are shown in Table 2.

	Fluke	Scup	Black Sea Bass	Bluefish	Spiny Dogfish
Maine	0.0	0.1	0.5	0.7	58
New Hampshire	0.0	0	0.5	0.4	
Massachusetts	6.8	21.6	13.0	6.7	
Rhode Island	15.7	56.2	11.0	6.8	
Connecticut	2.3	3.2	1.0	1.3	
New York	7.6	15.8	7.0	10.4	2.7
New Jersey	16.7	2.9	20.0	14.8	7.6
Delaware	0.0	0	5.0	1.9	0.8
Maryland	2.0	0	11.0	3.0	5.9
Virginia	21.3	0.2	20.0	11.9	10.8
North Carolina	27.4	0	11.0	32.1	14.0
South Carolina				0.0	
Georgia				0.0	
Florida				10.1	

Table 2 - State-by-State Allocation - Percent of Commercial Quota

The U.S. manages its fisheries in the Exclusive Economic Zone (3 to 200 miles offshore) through the Department of Commerce, NOAA and the National Marine Fisheries Service. The enabling legislation is the Magnuson-Stevens Act (MSA) (as amended) originally signed into law in 1976. The MSA established 8 regional fishery management councils to advise NMFS on fisheries management and to develop Fishery Management Plans for the conservation and utilization of our nation's marine resources. Summer flounder, as well as the other 4 species managed under state-by-state quota fall under the jurisdiction of the Mid-Atlantic Fishery Management Council (MAFMC).

Fisheries within 3 miles are managed by the individual states. However, the 15 Atlantic coastal states from Maine to Florida have come together to form the Atlantic State Marine Fisheries Commission. The ASMFC develops fishery management plans which the member states then implement in their respective states. The 5 species managed under state-by-state quota are also under the purview of the ASMFC.

Although the MAFMC and the ASMFC are two separate entities, they work together on the development of Fishery Management Plans, including stock assessment, quota setting and other management measures. In fact, many individuals are members of both the Council and the Commission. Thus both are responsible for management issues relative to these state-by-state quota species.

As requested, the focus of this testimony will be on summer flounder, or fluke. However, the issues, economic impact and inequities to New York fisherman are similar for all five species.

HISTORY

Although the fishing industry in New York was large and active during the base years, the allocation to New York is quite low for many of the species. This is particularly evident when New York is compared to its neighboring states of New Jersey and Rhode Island. The fish did not avoid New York fisherman nor were New York fisherman any less skilled at catching fish. The basis of the problem and of the inequity in the state-by-state allocation is the system of accounting for commercial fish landings that was in place during the baseline qualifying periods.

As shown in Table 2 above, the state-by-state allocation system in place for the commercial summer flounder quota puts New York fishermen at a severe disadvantage. NY receives 7.6% of the commercial quota, while the allocation to other states is: RI – 15.7%; NJ – 16.7%; VA – 21.3%; NC – 27.4%. Other states receive less allocation.

The NMFS data collection system for commercial landings that was in place during the time period that established individual states' percent allocation of the summer flounder annual commercial quota caused inherent inadequacies in New York's allocation. The data collection system during the baseline period on which the state-by-state summer flounder allocation was based, put New York at a severe disadvantage compared to other states. The methodology used for data collection during the baseline period was inadequate and thus the method of allocation was prejudicial.

The NY landing records and histories, as compared to the other states, were determined on a completely different and separate methodology. The main difference is due to the unique way of landing and marketing fishery resources in NY as compared to the rest of the east coast. During the baseline period, NMFS had established a "weighout system" in every major landings state in the Northeast Region, except for New York, Connecticut and N. Carolina. This "weighout system" was developed specifically to collect, track and report commercial landings within the regulatory framework available at the time. The "weighout system", however, was not implemented in NY because the first sale transaction system in place for seafood in NY was completely different from what occurred in other states. The majority of all fisheries landings for all states other than NY involve a process that included a dockside transaction, meaning, the sale and/or auction of the fish occurred at that point. This transaction was recorded not only by the dealers purchasing directly from the boat but also included a NMFS dealer report (weighout) that was generated at the point of sale. Thus, summer flounder landings were tracked at this point of first sale and then could be verified by individual fishing records generated by the "weighout system". NY fishery landings, including summer flounder, do not for the most part include a dockside transaction. Fish are landed at a pack-out dock and then shipped on consignment to various dealers at the Fulton Fish Market in NY City. The first-sale transaction does not occur dockside as in other states.

Thus, in NY the dockside report/record during the baseline period did not include a sales transaction or a species manifest, but simply a carton or box total number trucked to Fulton Fish Market. The consignment agreement between the fisherman and the Fulton Fish Market wholesaler during this period was simply completed by a return made by the Fulton wholesaler directly to the commercial fisherman detailing the result of the sale of the products with no copy

or "weighout" provided to NMFS or NYSDEC or the unloading dock. During the period leading up to the summer flounder fishery management plan being implemented, there were no mandatory requirements for Fulton Market dealers to report their consignment sales/purchases. Mandatory reporting for dealers licensed to purchase from federally permitted fishing vessels did not go into effect until 1994. NY State did not initiate mandatory reporting for state dealers until after that. So there were no reports or "weighouts" generated by Fulton Market dealers during the summer flounder baseline period. Further, the general attitude by the NY fishing industry (including the Fulton Fish Market) was to treat this information as proprietary in nature. Specifically, there was a great amount of secrecy and thus information about landings by species and by location was protected for a myriad of reasons. Since there was no dockside transaction, NY landing histories were not readily available and proved to be inadequate at that time. Landings were constructed by NMFS based on a dock-by-dock box count and an estimation of the content of those boxes based on dock personnel recall. There were no "weighouts" available to verify landings.

This system also allowed for some volume of fish to go completely unaccounted for. Some small remote docks were not regularly visited by NMFS personnel to collect box-count information. There were also some number of fishermen in close proximity to the Fulton Market that would deliver their fish directly without any packing dock involved. During the 1970's, 1980's and early 1990's, there was a fleet of North Carolina and Virginia fishing vessels that fished out of NY ports during summer months. The dealers that these vessels normally sold to in their home ports would send trucks to NY ports to continue to buy from these vessels and truck the fish back to their homeport. Since there was no dock-side purchase by the unloading dock, these fish were reported by the first transaction dealers as landed in Virginia or North Carolina.

We need at this point to look back in time to when the state-by-state allocation developed and implemented and review the NMFS regional data collection activities at that time. If in fact, because the NY system of landing and marketing fisheries products resulted in inadequate histories available at the time compared to the rest of the region, an argument could be made that the dissimilar basis of the landing histories used, unfairly/ inaccurately portrayed NYS summer flounder landings. Simply put, the NMFS system for collecting and reporting landings data was significantly different in NY than it was in the other Mid-Atlantic and New England states. This difference in the data collection/reporting system put NY at a severe and significant disadvantage relative to baseline calculations for state-by-state quota allocations. These included summer flounder as well as other species such as scup, sea bass and bluefish. Further, the disadvantaged NY industry was discriminately treated in an unfair manner in the establishment of the state-by-state quota allocation.

Recent attempts have been made to validate and/or collect NY baseline period landings information in several different ways: (1.) An effort was made to correlate the Fishery Market News "green sheets", which were maintained by the National Marine Fisheries Service that tracked the daily general Fulton Fish Market activity, in order to determine some landing history. This proved to be difficult and did not generate useable information. (2.) An effort was made to collect landing histories from individual NY fisherman by the NYS Department of Environmental Conservation in cooperation with commercial fishing organizations and others.

This information also proved difficult to collect across the board and again did not result in a composite NY State landing history.

As was mentioned above, NMFS also did not have an established "weighout" system in place in Connecticut and North Carolina. However, the issue was resolved in those states in the following manner. In North Carolina, the Division of Marine Fisheries had in place a reporting and sampling program during the baseline period. These data were used to establish North Carolina's state percent allocation. In 1993, Connecticut successfully convinced the MAFMC to re-examine their percent quota based on the fact that NMFS did not have a port-agent in Connecticut, nor were there weighouts available on which to base landings. In Amendment 4 to the FMP, Connecticut's percent of the annual quota was increased. No such consideration was ever given to NY.

Senator Schumer has previously arranged meetings with NMFS leadership to help resolve the severe and significant disadvantage for NY of the summer flounder state-by-state quota. A meeting was held in NY with the fishing industry to discuss issues relative to NY's summer flounder allocation. Attending this meeting were Senator Schumer, Congressman Bishop, Eric Schwaab – then NMFS Assistant Administrator for Fisheries and Dr. Jane Lubchenco – then NOAA Administrator. Nothing resulted from the meeting to help address the inequity of NYs fluke allocation.

IMPACTS

Since the implementation of the summer flounder fishery management plan, the resource has been steadily increasing and is now fully rebuilt and overfishing is not occurring. However, we are still managing a fully rebuilt stock the way we were managing a depleted stock 20 years ago. It is time to update the management of the summer flounder fishery.

Also, as the stock has increased, there is some evidence that there has been a shift in the concentration in the resource such that NY is geographically located near very high concentrations of summer flounder year-round based on new migratory patterns. In fact, this shift in the northward concentration of the summer flounder resource has also affected the fishery in the southern portion of the fish's range. For the past couple of years, neither North Carolina nor Virginia has been able to harvest their quota allocation. Additionally, North Carolina has been transferring quota to Virginia due to issues with North Carolina vessels not being able to access North Carolina ports because of shoaling inlets. In fact, even after transferring over half of its quota to Virginia, North Carolina still only harvested 65% of its quota in 2012. Also Virginia harvested 97% of its quota and Maryland only harvested 52% of its quota. None of this underage was offered to NY. The fish just aren't available any more in large abundance off of these southern states. High fuel costs prohibit vessels from North Carolina and Virginia from traveling to waters off of New York for access to the resource. Neither the distribution of the fish nor the fishery are the same as they were 20 to 30 years ago.

A significant amount of the summer flounder commercial harvest occurs outside of 3 miles. NY fishermen are fishing alongside of fishermen from RI, NJ and other states while fishing in federal waters. NY fishermen are allowed far less quota and thus a smaller trip limit than fishermen

from these other states, even when fishing together in federal waters. Over the years, this has forced some NY fisherman to purchase (at a premium price) state fluke permits to allow them to land in New Jersey or Rhode Island. This only serves to reduce economic activity and jobs in NY and increase operating expenses for NY fishermen.

Table 3 highlights the impact to NY's economy, relative to other states, because of the state-by-state quota system. The value in Table 3 is ex-vessel value – the amount paid directly to the fisherman. The full economic return to the local community is approximately 4.2 times ex-vessel value. Conversely the economic loss to local NY communities can be seen as 4.2 times the potential lost revenue due to a disadvantaged quota system. In 2011, this amounted to a loss of $12 million compared to Rhode Island or a loss of $9.3 million compared to New Jersey – a severe impact to jobs and the economy in local NY communities.

	Value in Dollars
New Jersey	5,422,719
New York	3,208,277
North Carolina	6,136,621
Rhode Island	6,057,311
Virginia	5,920,332
TOTAL VALUE	26,763,260

Table 3- 2011 Ex-Vessel Value of Summer Flounder Landings (excludes RSA landings)

RECOMMENDATIONS

We are still managing the summer flounder resource (and other state-by-state quota species) on incomplete data from over 25 years ago. Further, we are managing summer flounder the same way we did 25 years ago for an overharvested stock. The resource and the fishery have changed. It is now time to change the management of the resource.

A change should be made away from state-by-state allocation to a system based on a regional or coast-wide quota and associated trip limits. This would provide equitable treatment for all fishermen and would help address the inequity to NY fishermen that was precipitated by the discriminatory NMFS data collection system in place in NY during the baseline period. As in other fisheries, qualified fishermen could fish where they wanted in the EEZ and all fishermen fish under the same regulations, quotas, trip limit or days at sea, regardless of what state they are from.

Another approach could be a combination of coast-wide and state-by-state quotas. As an example, Amendment 8 to the Scup FMP adjusted the scup fishery to modified partial coast-wide partial state-by-state quota system. In the summer months, the fishery is divided into a state-by-state quota system to allow inshore fishermen that fish in state waters equal access to the resource. Then in the Winter I and Winter II periods, when traditionally a larger portion of the fishery took place offshore, scup is regulated by a coast-wide quota system in which all states have the same limit per trip until the quota for that period is caught. During the development of Amendment 8 to the scup FMP, it was acknowledged that the year-round state-by-state system

developed for summer flounder was not a desirable system. It would be advisable to create a modified partial state-by-state/coastwide fishery for summer flounder and other state-by-state fisheries, as the MAFMC did for the scup fishery in 1996. However, the state-by-state portion must be a more fair and equitable distribution than was established 25 years ago.

We also need to add flexibility into the management system. Not all species can fully respond within an arbitrary rebuilding 10-year time frame. Summer flounder is a prime example of that. Senator Schumer was successful in obtaining an additional 3 years in the rebuilding period for summer flounder. The fish did just fine and the stock is fully rebuilt. I urge you to consider providing for flexibility of rebuilding schedules in the upcoming reauthorization of Magnuson.

As our fishery resources become fully restored, management has to change to a new philosophy. All of the fishery management plans in the Mid-Atlantic were developed to rebuild overfished stocks. But now that stocks are fully rebuilt, the management approach has not changed. We have fully rebuilt stocks, but fishermen are still conservatively restrained. Ask any commercial or recreational fisherman if they have seen any improvement in their catch for fully restored summer flounder or black sea bass and they will respond in the negative.

Due to the current management process, quotas are set way below the level that could be harvested without causing overfishing to occur. The output from the stock assessment could allow harvests at higher levels. However managers must take a precautionary approach to setting quotas. The precautionary approach is driven by some of the uncertainties in the inputs to stock assessment models. If there is uncertainty or low confidence or high variability in the data inputs to the stock assessment, it causes uncertainty in the output. The greater the uncertainty the more precautionary the management approach and the lower the harvest quota becomes. But the uncertainty can also mean that there is either a higher or lower level of abundance than estimated. But the precaution always results in a lower quota.

The science of stock assessments is an imprecise science at best. Yet the management process is being driven by an approach that says because it is imprecise we have to take an extremely precautionary approach. Precautionary is a subjective term. Poor or incomplete data just makes the analysis even more imprecise and drives further precaution.

Much of this uncertainty and precaution is driven by poor or incomplete data. Often times even the "best available data" can still be poor or lacking data or science. We have reached a point in management, particularly with setting annual catch limits and accountability measures, where the science cannot keep up with management. Management is putting demands on science that the science cannot keep up with.

It is not that we don't have intelligent qualified scientists. Quite the contrary. But our scientists can only do so much in a day's work and the management asks for more. Scientists can only do so many stock assessments in a year. Many species go several years between benchmark stock assessments. Summer flounder is a prime example. It has been 5 years between full assessments for summer flounder.

Scientists can also only do so many surveys in a year. Or only collect so much data in a year. The current level of staffing for fisheries science cannot do all things for all species every year. So we settle for a precautionary approach based on uncertainty and the fishermen and the communities that depend on them pay the price.

Much of the problem of course is funding. Currently the state and federal resources available to support fisheries science are not sufficient to meet the legal mandates of management. More funding, of course, can solve most of the science issues. But I realize the fiscal reality that this is not likely to occur. The alternative is for management to not require science to do things we cannot afford to fund it to do. This can be fixed in the reauthorization of Magnuson.

An opportunity to help with science and data collection is cooperative research. Cooperative research is where scientists get together with fishermen to implement innovative programs to collect and provide needed fisheries data and information. Scientists and fishermen working side by side on fishing boats to improve fisheries science. It is good for the scientists, good for the fishermen and good for the fish. And it is supported by scientists and fishermen alike. Cooperative research does cost money. But it is less expensive and provides an excellent return for the investment.