



The NCMC

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Summer 2008

MID-TERM REPORT ON MENHADEN

Inside this issue:

- | | |
|---|---|
| Ocean View-
Commentary by
NCMC
President
Ken Hinman | 2 |
| The Complete
Guide to Setting
Catch Limits | 4 |
| Butterfish
Rebuilding Plan
Finally Underway | 5 |
| NMFS Implements
Tough Regulations
for Overfished
Atlantic Sharks | 6 |
| House
Passes Shark
Conservation Act | 6 |
| American Shad
Rebuilding Must
Protect Fish at
Sea | 7 |

Halfway Through Cap, ASMFC Needs Outside Help

In 2006 the Atlantic States Marine Fisheries Commission (ASMFC) put a freeze on the total catch of menhaden in Chesapeake Bay for five years and promised to study localized depletion and its impacts on striped bass and other predators. By 2011, according to the ASMFC's pledge, the cap would be replaced with a long-term management program that specifically takes into account menhaden's unique role in the coastal ecosystem.

We are now half-way through the "timeout" and the National Coalition for Marine Conservation and others who fought hard for this precautionary approach are growing increasingly frustrated with the slow rate of progress and, even more so, the foot-dragging by the ASMFC. Specifically, although research is underway, it's becoming increasingly obvious that it will not answer the questions the commission is asking before the cap expires in 2010. Meanwhile, the Menhaden Management Board has used the cap to take a vacation from menhaden matters, blithely awaiting those results, seemingly unaware that the scientists' ball is about to be tossed back into the managers' court.

Indeed, frustration was evident at a May 8th Congressional hearing held by the House Fisheries Subcommittee, which is considering a pair of bills that, if enacted, would take the ball away from the ASMFC and impose a moratorium on the commercial harvest of menhaden for reduction purposes until research into the ecological health of menhaden populations is completed.

As NCMC president Ken Hinman told members of the subcommittee, including the bills' authors, Reps. Wayne Gilchrest (R-MD) and Jim Saxton (R-NJ), the case for Congressional intervention is mounting. The ASMFC is unlikely to be prepared to implement a new management regime when the present one expires. *Unless* new science, and a renewed commitment to change, are introduced from outside the commission.

PREDATOR DEMANDS OUTPACE SCIENCE

The ASMFC's menhaden scientists (the Technical Committee) met July 9th to review progress on Chesapeake Bay-focused research and begin planning for the 2009 stock assessment. Based on what's been done so far, there is little doubt that predation demand has increased dramatically, coastwide and in the bay, while menhaden numbers - based on recruitment of young fish into the bay population - remain low relative to historic levels. In addition to the resurgence in striped bass, which continue to exhibit signs of stress (disease, malnutrition), the numbers of predatory birds such as ospreys and cormorants using the bay as nesting and feeding grounds has increased by 8-fold since 1975.

But estimating predator removals of all suitable prey, not just menhaden, is difficult, as is the more subjective task of determining whether it is enough. One study indicates menhaden almost entirely make up the diet of large striped bass, while

(Continued on page 3)

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PIRATES OF THE MEDITERRANEAN

The indecision that for years has paralyzed the International Commission for the Conservation of Atlantic Tunas (ICCAT) as a conservation body spread to the relatively routine task of choosing a site for the November 2008 annual meeting. Just four months before the November 17-24 session, the commission finally settled on Marrakech, Morocco.

We must say, gathering on the Barbary Coast does seem appropriate, what with the plight of bluefin tuna at center stage this year. The Mediterranean Sea is once again a haven for piracy, although today we call it illegal, unregulated and unreported (IUU) fishing. The Spanish, French and Italian fleets are among the worst offenders.

ICCAT's scientific advisors warned two years ago that a total catch above 15,000 metric tons risked collapsing the Eastern Atlantic and Mediterranean stock of severely over-exploited bluefin. The Europeans and North Africans, however, backed a quota of nearly twice that many fish. In recent years, the true catch has been close to 50,000 tons. The European Union closed its purse seine fishery early this summer, but not before agreed-upon limits already had been exceeded. New ICCAT control measures, supposed to rein in the rampant overages, failed, largely due to overcapacity.

THE ABCS OF BLUEFIN RECOVERY

For these reasons, the United States delegation to ICCAT has supported a moratorium on harvesting bluefin in the east. If that position is repeated this year, it should be expanded to include the west, too, given the dire condition of both stocks. Although the two stocks mix on foraging grounds, their spawning components are separate and distinct. The number of eastern spawners, who breed in the Mediterranean, is below 50% of the early '70s level but dropping fast due to unrestrained fishing. The western stock, which spawns in the Gulf of Mexico, is even worse off, at less than 20%, despite U.S. compliance with ICCAT quotas.

But realistically, if that's going to be Plan A, we need a Plan B. We propose the U.S.:

- Introduce a binding resolution requiring that the allowable biological catch (ABC) for all fisheries must be based on the scientific advice.
- Support a closure of bluefin spawning grounds in the Mediterranean and Gulf of Mexico to purse seines and longlines during breeding season.
- Advocate for a no-fishing zone in the Central Atlantic, e.g., extending 10 degrees longitude on each side of the line that divides the western and eastern stocks (45 degrees west meridian), until new boundaries are drawn that account for mixing.

If something approaching the above is not agreed to by ICCAT in 2008, there is a Plan C, as in CITES. The U.S. should propose listing Atlantic bluefin tuna under Appendix 1 of the Convention on International Trade in Endangered Species and close the global market that is driving bluefin—and ICCAT—to the edge.

Ken Hinman, President

NATIONAL COALITION FOR MARINE CONSERVATION

Founded in 1973

The NCMC is a 501(c)(3) non-profit organization dedicated to the following goals:

- ◆ preventing overfishing and restoring depleted fish populations to healthy levels
- ◆ promoting sustainable use policies that balance commercial, recreational and ecological values
- ◆ modifying or eliminating wasteful fishing practices
- ◆ improving our understanding of fish and their role in the marine environment
- ◆ preserving coastal habitat and water quality.

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MID-TERM REPORT ON MENHADEN (Continued from page 1)

another shows a decline in menhaden in the bay striped diet. Is this decline due to prey-switching because of a lack of menhaden, a sign that bass are opportunistic feeders, or both? What is the status of the total prey base, and how are a wide range of predators, including bluefish and weakfish, faring? Is a discernible decline in menhaden within the bay offset by signs of renewed abundance outside the bay and to the north, or should the bay population be considered separately in order to satisfy the bay's substantial population of predators?

The Technical Committee is clearly frustrated that the information coming out of these ASMFC-sanctioned studies cannot be directly inserted into the model they plan on using for the next assessment. At best, they say, it will provide supplementary information for managers to consider. But what will they do with that information? Debate its meaning? We've been there before. With this contingency in mind, NCMC urged the Menhaden Management Board, beginning in 2006, to develop more precautionary standards to prevent "ecosystem overfishing," for example, by setting a new threshold population size and age structure to serve as a proxy for allocation of the species as forage. So far, these deliberations have not occurred.

Without an alternative model for assessing the status of the stock - either on a coastwide or a bay-specific basis - the scientists on the Technical Committee predict their '09 assessment will be an update of the last one, which said menhaden are not overfished and overfishing is not occurring. That, too, would take us back to square one.

But an alternative model does exist. It was brought to the committee's attention at the July meeting. Scientists from the University of British Columbia, who were working on developing a model for assessing a subpopulation of menhaden in Chesapeake Bay, applied another model they'd been developing - it was recently published in a peer-reviewed journal - to the data they'd collected on the coastwide menhaden stock. Its conclusion: menhaden are overfished and overfishing is occurring.

MORATORIUM BILL SHOULD HOLD ASMFC ACCOUNTABLE FOR 5-YEAR PROMISE

The ASMFC's menhaden stock assessment panel will meet in the fall to go over the data to be used in next year's assessment as well as what model or models to use. The new UBC model, we are told, will be on the table. Ideally, the panel would run parallel assessments. Whatever they do will undergo an external peer review in

2010, which would evaluate the relative strengths of both models. Of course, it's fair to assume, given what we know about the alternative model's preliminary conclusion, that this would meet with resistance from those wedded to the *status quo*, both in how the stock is assessed and in how the fishery is managed.

And based on testimony at the May Congressional hearing, you can count not just the reduction industry among the skeptics, but the ASMFC as well. Executive Director Vince O'Shea shocked many observers by downplaying the science supporting concerns about the health of the menhaden resource and defending both the existing assessment and current management measures as considering the needs of predators.



In the first two years of the cap, the reduction fleet has shifted effort offshore, unable to find enough fish in the bay.

For its part, Omega Protein, the only company fishing for reduction on the Atlantic Coast, hired a former NOAA-scientist to debunk the notion of menhaden as "the most important fish in the sea." In fact, Dr. John Everett testified that it might be the least important since, according to his reading of the scientific literature, filter-feeding menhaden actually pollute bay waters by excreting waste and reduce populations of other fish by consuming their

eggs and larvae. The paper he did for Omega was reviewed by the Technical Committee, at the request of the ASMFC, and the response wasn't what they'd hoped. The committee summarily dismissed his conclusions as unsupported by the science, including the references cited in his paper.

But if this obfuscation of the truth in defense of the *status quo* is any indication of what we can expect the ASMFC to do - or not do - during the second half of the menhaden timeout, perhaps Congress does need to intervene and compel the commission into action.

In our testimony at the House hearing, NCMC recommended that, instead of using a moratorium on industrial fishing for menhaden to supplant the interstate management regime that is in place, congressional intervention could be used to reinforce that regime. Said Hinman: "Congress should reverse the approach outlined in these two bills and pass legislation that would impose a federal moratorium beginning in 2011 if the ASMFC has not amended its Atlantic Menhaden Fishery Management Plan to set catch limits that explicitly account for the needs of the many fish, seabirds and marine mammals that depend on menhaden as a key source of prey."

This approach would be consistent with Congressional oversight of interstate fisheries management in the past. The threat of a federal moratorium was critical to state action to save striped bass. Pressure from outside just might be what's needed to get the states to make the tough decisions to conserve menhaden, too. □

THE COMPLETE GUIDE TO SETTING CATCH LIMITS

Proposed Federal Guidelines Highlight Special Needs of Forage Fish

In the Magnuson-Stevens Reauthorization Act (MSA) of 2006, Congress required fishery managers to set science-based limits on catches in all fisheries to end overfishing by 2010. On June 9th, the National Marine Fisheries Service (NMFS) issued a Proposed Rule for complying with the new requirement, as a revision to its Guidelines for National Standard 1 of the MSA.

The National Coalition for Marine Conservation testified at the very first hearing on revising the NS1 Guidelines in March 2007, urging NMFS to use this opportunity to provide the regional fishery management councils with long-needed guidance on setting catch limits to protect the broader ecosystem, with particular emphasis on forage species such as herring, squid, mackerel, sardine and menhaden. We are pleased, therefore, that the Proposed Rule takes an important first step in providing this long-needed guidance. Unfortunately, it's not enough.

Our request for guidance on setting catch limits in an ecosystems context requires some historical context. At a Striped Bass Symposium we co-sponsored way back in 1980, the head of NOAA (NMFS' parent agency) predicted - boldly and, in hindsight, a bit naively - that "(w)ithin a few years, I expect that most fishery management plans prepared will be multispecies plans, which will take into account predator-prey relationships in particular. Not too long after that, I hope we will use an ecosystem approach to fishery management."

But as Yogi Berra once said, if you don't know where you're going, you might end up someplace else. "Without a road map for implementing an ecosystem approach," says NCMC president Ken Hinman, "we've been stuck 'someplace else' for the last 28 years, talking a good game, but mostly walking the same."

FIRST-EVER MAGNUSON ACT GUIDANCE ON PROTECTING PREY

It's been almost 10 years since the NMFS Ecosystems Principles Advisory Panel (which Hinman served on) recommended protecting predator-prey relationships in existing management plans as the first step toward an ecosystems approach. Yet last year, when NCMC made a presentation to the Mid-Atlantic Council on the need to further protect key forage species they manage - Atlantic mackerel, squid and butterfish - we were told by the council's executive director, Dan Furlong, that our "emphasis on forage first and protecting the predator-prey relationship could be a logical first step toward an ecosystem-based approach to fisheries management," but "we are awaiting guidance from NMFS as to how to proceed on this topic."

For the first time, the new guidelines offer the councils some usable advice, where none existed before, for setting

catch limits to protect the food web the target species is a part of. In response to the concerns of NCMC and our allies in the Marine Fish Conservation Network, NMFS added "maintaining adequate forage for all components of the ecosystem" as a goal and included "impacts on forage fish stocks" among factors to consider when setting catch limits. In addition, NMFS says consideration should be given to managing forage stocks for "higher" population levels to enhance and protect the marine ecosystem.

"Recognizing and highlighting the special need to conserve forage fish at abundant levels to serve predators in the ecosystem is definitely a breakthrough that sends a much-needed signal to the councils," says Hinman. "But as advice for what the councils should consider doing to conserve key forage fish, it does not go nearly far enough."

PREY AVAILABILITY IS KEY

First, simply setting a more conservative target population level (and how much higher?) does not fully protect a prey fish's role in the ecosystem. Second, the minimum stock size threshold - the point at which NMFS declares a species "overfished" and strict rebuilding measures kick in - is just as critical as the target. The guidelines are silent on both points.

Fishing a prey population down to a fraction (half or less) of its un-fished level (see diagram on page 5), which is allowed under current law, not only diminishes the total amount of prey, it reduces availability to predators in other ways. The reduction in spawning stock biomass causes a shift in the age/size composition toward younger, smaller fish and alters the geographic distribution of the population. In other words, prey density changes in three ways: the number of prey (total population), type of prey available (size/age), and distribution throughout their natural range. Each of these factors is important to predators finding an adequate supply of food.

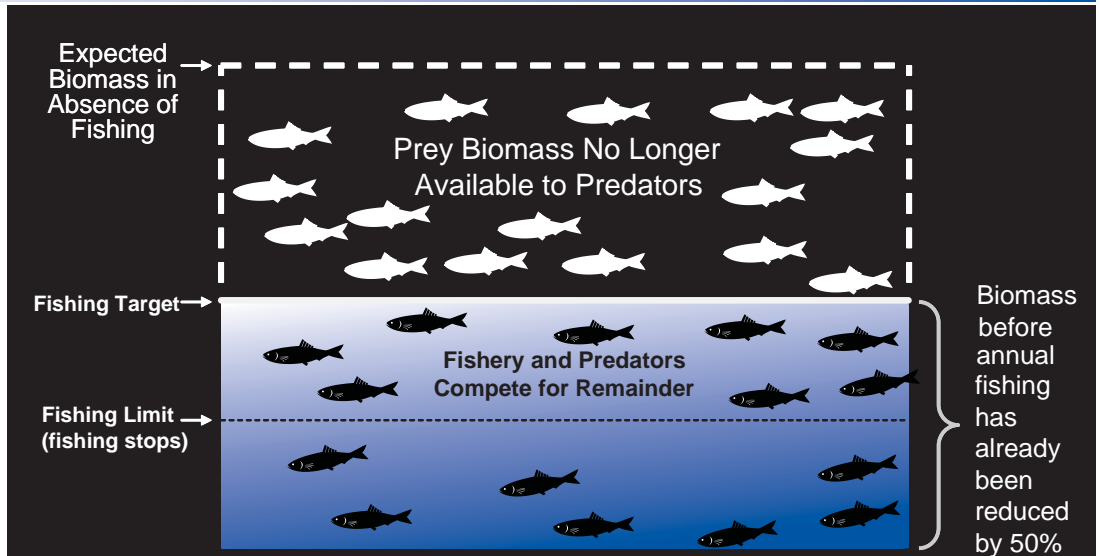
The need to consider all of these factors was emphasized in a peer-reviewed scientific paper published in the Fall 2006 issue of NOAA's highly regarded *Fishery Bulletin*. The study, entitled "Seasonal and size-based predation on two species of squid by four predators on the Northwest Atlantic continental shelf," looked at four predators: summer flounder, bluefish, silver hake and goosefish. The author, Michelle Staudinger, found that, if competition between the squid fishery and predation by summer flounder in particular is not accounted for, it can have detrimental consequences.

She concluded that: a) summer flounder is a major predator of squid; b) predation on squid is at its maximum offshore during the winter months; c) the majority of commercial catches are offshore during the winter; and d)

rebuilding of summer flounder is increasing the age/size of fish that the study identifies as the most voracious predators of squid.

The study argues for reassessing the predatory demands of summer flounder, bluefish and other recovering predators on squid and taking a multi-species approach to management to make sure simultaneous exploitation of predators and their prey - in area and in time - does not have detrimental consequences for one or both stocks.

The Mid-Atlantic Council, which manages summer flounder, bluefish and squid, refuses to act on this information "awaiting guidance from NMFS."



The Magnuson-Stevens Act, our nation's fishing law, is built on the concept of Maximum Sustainable Yield (MSY). To achieve MSY, a fish stock is reduced to around half of its original, pristine state to make the stock more productive. However, MSY-based catch levels do not take into account the needs of the ecosystem. Reducing a forage fish stock to these low levels severely impacts the availability of prey and likely hinders our ability to rebuild depleted predator stocks such as cod, marlin, and bluefin tuna.

NCMC SUGGESTS WAYS TO IMPROVE THE GUIDELINES

In testimony at a July 10, 2008 public hearing on the proposed NS1 Guidelines, the NCMC recommended that NMFS make the following modifications:

- Direct the councils to consider setting the target population for forage fish substantially higher than the MSY level in order to ensure adequate prey for predators. The precautionary buffer between the target catch and the overfishing limit needs to be wide enough to account for uncertain effects of climate variability and change, along with uncertainties in data and scientific advice.
- Direct the councils to consider establishing the MSY population level as the Minimum Stock Size Threshold, beyond which forage species would be considered overfished. In most federal plans, this would mean raising the overfished threshold from one-fourth of an un-fished population to one-half.
- Direct the councils to address the spatial and temporal impacts of fishing on forage fish and associated predators explicitly by allocating catch limits by areas and seasons to avoid localized depletions and serial depletions of forage fish.
- Direct the councils to consider conservation and management measures that maintain the natural age composition of forage fish stocks, which may be the truest means of determining the overall health of a population. □

BUTTERFISH REBUILDING PLAN FINALLY UNDERWAY

Draft Amendment Puts Spotlight on Atlantic Squid Fishery Bycatch

First declared overfished in 2005, butterfish continue to suffer high annual losses in the longfin (*Loligo*) squid fishery. The Mid-Atlantic Fishery Management Council (Council), which manages both species under its Atlantic Mackerel, Squid and Butterfish Fishery Management Plan (MSB FMP), reports that butterfish discards are equal to twice the landings.

Though the Council missed its legal deadline to implement a rebuilding plan for butterfish within a year after the overfished designation, a draft plan (Amendment 10 to the MSB FMP) was released for public comment in March 2008. NCMC testified and provided written comments, strongly advocating for a permanent butterfish bycatch cap, enforced through substantially increased observer coverage of the squid fishery, as the only alternative that could rebuild butterfish within the 5-year time frame. Historically, observer coverage of the squid fishery has averaged less than 1%, rendering bycatch data useless for extrapolation.

NCMC also took the opportunity to encourage the Council to act on the new National Standard 1 Guidelines (See *The Complete Guide To Setting Catch Limits*, page 4) by increasing the population rebuilding target to provide an adequate supply of butterfish for predators. The Mid-Atlantic Council is the only regional council managing forage species that does not recognize their ecological importance within its management plan objectives. □

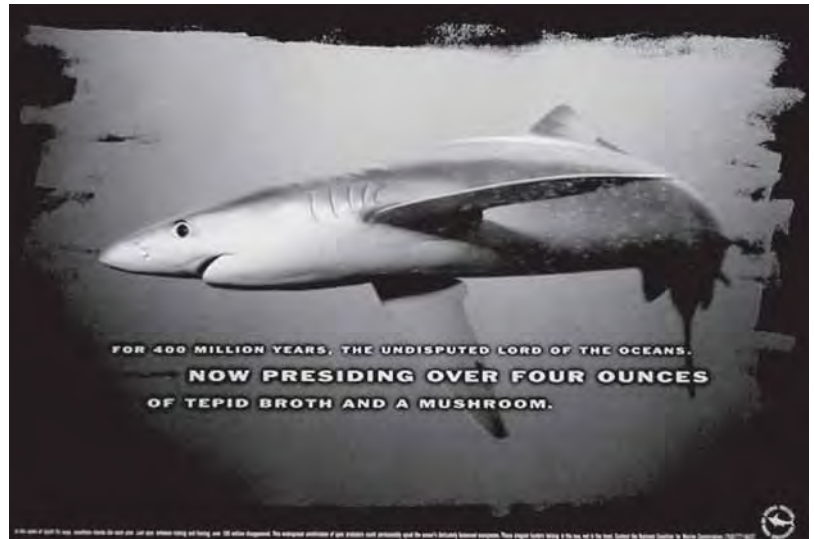
NMFS IMPLEMENTS TOUGH REGULATIONS FOR OVERFISHED ATLANTIC SHARKS

On June 24th, the National Marine Fisheries Service (NMFS) implemented strong conservation measures for severely depleted coastal sharks in the Atlantic and Gulf of Mexico. Stock assessments conducted in 2006 revealed that sandbar, porbeagle and dusky shark populations have been severely overfished, and rebuilding timeframes are projected at 66, 100 and 400 years, respectively. Thanks to numerous comments filed last winter by conservation and fishing groups, including NCMC and its members, a tough program to protect and restore these species is now in place.

Sandbar sharks are a popular target for commercial fisheries because their dorsal fins command high prices in the shark-fin trade. Dusky sharks, which have been a prohibited species since 1998, are often caught as bycatch on bottom longlines set for sandbars, negating rebuilding efforts. The new regulations, known as Amendment 2 to the Atlantic Highly Migratory Species Fishery Management Plan, will impose a dramatic 80% cut in the commercial quota for sandbar sharks and all sandbar must be landed as part of a research program limited to 5-10 vessels carrying observers at all times. Porbeagle catch has also been cut to a fraction of previous levels, with the majority of the quota allocated to the recreational fishery.

The drastic cuts in allowable shark landings would mean little if these regulations could not be properly enforced. For this reason, the most significant change in Amendment 2 may be a new requirement that all sharks be landed with fins naturally attached. The fins-on measure will facilitate identification of sharks at the dock and dealer, improve data collection and stock assessments, and will greatly aid authorities in enforcing the U.S. ban on shark-finishing. Previous rules permitted fins to be removed from the carcass before landing as long as they fit a fins-to-carcass ratio that was imprecise and open to abuse.

While Amendment 2 only applies to Atlantic and Gulf of Mexico shark fisheries, the fins-on measure likely influenced a recent amendment to the Shark Conservation Act (see story below). □



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HOUSE PASSES SHARK CONSERVATION ACT

Now it's up to the Senate

On July 8th, the U.S. House of Representatives passed the Shark Conservation Act (H.R. 5741) to strengthen the U.S. shark finning ban and encourage other countries to implement comparable regulations or face U.S. sanctions.

Before reaching the House floor for a vote, the Subcommittee on Fisheries, Wildlife, and Oceans amended the act to require the fins to be naturally attached to any shark landed within the United States and its territories. This is a major victory for sharks because the fins-on requirement would not only help enforcement of the finning ban, it would also assist in the identification of sharks, improving our understanding of shark populations. **Special thanks to all of our NCMC members who wrote to their Representatives in support of this important legislation!**

Now the bill has moved on to the Senate and must be approved by majority before it can be enacted. The Senate version of the Shark Conservation Act (S. 3231) was introduced by Senator John Kerry (D-MA) after the House vote, and the bill was then referred to the Senate Committee on Commerce, Science, and Transportation. We need your help to keep the momentum going! Please take a moment to write to your senators today. You can find your senators' contact information on the Senate's web site, <http://www.senate.gov>.

For your convenience, the sample letter from our Spring 2008 Marine Bulletin (Issue 121) has been modified for the Senate and is now located on www.savethefish.org. □

AMERICAN SHAD REBUILDING MUST PROTECT FISH AT SEA

George Washington's favorite fish, the American shad, used to be so abundant that it supported the largest commercial fishery in the Mid-Atlantic. Shad were easily caught in rivers during their spring spawning migrations from the ocean, providing a staple food for many communities along the Atlantic seaboard. Sadly, because of years of overfishing, damming waterways and habitat destruction, many Americans have never seen a shad, either in the water or in the seafood market. Stocks have steadily fallen over the last century and are now at "all-time lows," according to a recent stock assessment published by the Atlantic States Marine Fisheries Commission (ASMFC). This news is alarming because shad, like other species in the herring family, are important forage fish throughout their range supporting many predators such as striped bass, sharks, bluefin tuna, king mackerel, shorebirds and porpoises.

In response to the assessment, the ASMFC has initiated Amendment 3 to the Interstate Fishery Management Plan for Shad and River Herring. Comment on a Public Information Document (PID) was solicited through a series of hearings held throughout the Atlantic states. Regrettably, the issues selected for the PID did not address a key finding of the stock assessment team. After a brief period of shad recovery in the 1980s, the scientists found a new pattern of coastwide decline beginning in the late 1990s and early 2000s, suggesting that the problem is likely caused at sea, where stocks mix together on migrations to and from their summer feeding grounds that include the Gulf of Maine.

The stock assessment also indicated that the Atlantic herring fishery, which has been dominated by a fleet of mid-water trawlers operating in the Gulf of Maine since the late 1990s, could be responsible for "significant bycatch losses." While directed ocean harvest of American shad is not permitted, fisheries are given a bycatch allowance of 5% by weight. Considering that the Atlantic herring fishery lands an average of 150 million pounds a year, a 5% shad allowance could translate into over 7 million pounds – that's seven times the current annual landings from directed inland fisheries.

While shad bycatch at sea may be considerable, no measures have been taken to accurately quantify this bycatch. Observer coverage is poor, averaging less than 3% historically for pelagic fisheries that include Atlantic herring and Atlantic mackerel. Making matters worse, the National Marine Fisheries Service allows observers to use general categories such as "herring unknown" when classifying bycatch of shad, river herring and other small pelagic fish, so the individual species are lost in the system.

NCMC Executive Director Pam Lyons Gromen attended the shad hearing in Annapolis, Maryland on July 1st. "Given that American shad stocks are at record lows, maintaining the status quo management regime as suggested in the Public Information Document is unacceptable. A successful

rebuilding plan must follow the advice of the stock assessment scientists and include measures to protect shad *both* in their riverine spawning grounds *and in the ocean* where they spend the majority of their lives," she said.

NCMC advocates for the following measures to be included in Amendment 3.

- Improve at-sea observer and port sampling programs to accurately investigate, quantify, and if necessary, cap bycatch of American shad in other fisheries, particularly fisheries for Atlantic herring, mackerel and other pelagic fish, where there is potential for significant losses;
- Require member states to implement standardized data collection programs to accurately document, monitor and control all American shad catches (commercial and recreational, directed and incidental, for both state and federal waters);
- Close all directed commercial harvest for American shad, putting the burden of proof on States to reopen their fisheries once they provide documentation that their stocks are healthy (not declining in numbers and overfishing is not occurring) and can sustain some level of harvest;
- Implement catch-and-release-only programs for the recreational sector for stocks that are declining and experiencing overfishing;
- Explicitly account for predation mortality in stock assessments and provide a precautionary allocation for predators when determining total allowable catch, both directed and incidental.

The ASMFC's Shad and River Herring Management Board will meet on August 21st in Alexandria, Virginia to review public comment and create options for the shad amendment (Amendment 3). In addition, draft Amendment 2, which addresses severely depleted river herring stocks also subject to high at-sea bycatch mortality, is scheduled to be completed at that time. □

PAM LYONS GROMEN ELECTED TO SHAD & RIVER HERRING AP

On May 5th, the ASMFC's Shad & River Herring Management Board elected Pam to its Advisory Panel (AP). During each phase of an amendment's development, the AP provides information and makes recommendations to the Management Board. Pam was selected from an impressive list of twelve nominees. "I am grateful for the opportunity to bring a coastwide perspective to the AP process," Pam said. "The new amendments underway must take action to recognize the contribution of shad and river herring to the Atlantic's forage base by protecting them from wasteful at-sea bycatch."



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