

ASMFC: A Matter of Priorities

by CHARLES WITEK



Charles Witek, from Greenwich CT, has spent over 50 years on the water, and is a well-known author and blogger. Witek said, "I have realized that without strong fisheries laws and effective conservation measures, the future of salt water fishing, and America's living marine resources, is dim."

No man can serve two masters: for either he will hate the one, and love the other, or else he will hold to the one, and despise the other. Ye cannot serve God and Mammon.

Matthew 6:24

The Atlantic States Marine Fisheries Commission (ASMFC) has been maddeningly ineffective when it comes to rebuilding fish stocks and maintaining such stocks at sustainable levels.

While federal fishery managers, guided by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens), have already rebuilt at least 45 once-overfished stocks, ASMFC has only rebuilt a single stock, Atlantic striped bass, since it was created in 1942. A recent stock assessment has revealed that even striped bass are once again overfished and subject to continued overfishing.

ASMFC manages 27 different species (or, in some cases such as coastal sharks, species complexes) of fish and crustaceans, which can be further broken down into 33 separate fish stocks. Nine of those species, and ten of the stocks, are also federally-managed, and so benefit from the conservation and management measures required by Magnuson-Stevens. Of the other 23 stocks, only five, or 22%, are completely healthy, neither overfished nor subject to overfishing. On the other hand, at least eleven of those stocks, nearly half of all stocks managed solely by ASMFC, are currently overfished.

It's hard not to wonder why federal fishery managers have been so successful in rebuilding and maintaining fish stocks, while ASMFC has had such dismal results. ASMFC has a dedicated staff of fishery professionals, both at its administrative and at its staff levels. The scientific advice that such staff provides is equal to that provided to the federal fishery management councils, and every ASMFC stock assessment goes through the same rigorous peer review as do the assessments of federally-managed species, a process overseen by the Northeast and/or South Atlantic fishery science centers.

In the end, it all comes down to priorities.

Federal fishery managers' priorities are clear. Magnuson-Stevens includes ten "national standards for fishery management and conservation." The first of those states that "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry."

National Standard 1, when read in conjunction with other provisions of Magnuson-Stevens, makes it clear that conserving fish stocks shall be the first priority of federal fisheries managers.

If there was any doubts about that, or any thoughts about

buffering such conservation concerns to address economic considerations, they were dispelled by the federal appellate court's decision in *Natural Resources Defense Council v. Daley*.

It stated that "under [Magnuson-Stevens], the [National Marine Fisheries] Service must give priority to conservation measures. It is only when two different plans achieve similar conservation measures that the Service takes into consideration adverse economic consequences. That is confirmed by both the statute's plain language and the regulations issued pursuant to the statute."

Thus, National Standard 8 can require that any conservation and management measures adopted "take into account the importance of fishery resources to fishing communities," and "minimize...adverse economic impacts on such communities," but only to the extent that can be done "consistent with the conservation requirements" of Magnuson-Stevens.

When economic and conservation considerations conflict, conservation must always come first.

That's just not how it works at ASMFC,

where the Interstate Fisheries Management Program Charter (ASMFC Charter) creates a web of contradictory management standards, that make it practically impossible to effectively conserve and manage fish stocks.

That charter begins by stating, "It is the policy of the Commission that its [Interstate Fisheries Management Program] promote the conservation of Atlantic coastal fishery resources, be based on the best scientific information available, and provide adequate opportunity for public participation."

It later establishes standards for all of the ASMFC's fishery management plans (FMPs), and in doing so provides that "Above all, a FMP must include conservation and management measures that ensure the long-term biological health and productivity of fishery resources under management. [emphasis added]"

The ASMFC's FMP standards even contain a very Magnuson-Stevens-like requirement that "Conservation programs and management measures shall be designed to prevent overfishing and maintain over time, abundant, self-sustaining stocks of coastal fishery resources. In cases where stocks have become depleted as a result of overfishing and/or other causes, such programs shall be designed to rebuild, restore and subsequently maintain such stocks so as to assure their sustained availability in fishable abundance on a long-term basis."

Based on such language, it would appear that the ASMFC, like federal fishery managers, lends conservation their highest priority. But that doesn't turn out to be true. **(to page 31)**

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