

**Testimony of James J. Gilmore  
Director, Bureau of Marine Fisheries  
New York State Department of Environmental Conservation  
Before the  
United States Senate  
Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard  
Committee on Commerce, Science and Transportation  
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Developments and Opportunities in U.S. Fisheries Management**

Good morning. My name is Jim Gilmore and I am the Director of the Marine Bureau for the New York State Department of Environmental Conservation (DEC). I wish to extend the appreciation of Governor Cuomo, DEC Commissioner Joseph Martens and myself to Senators Rockefeller and Begich and the rest of the committee members for this opportunity to testify on the history and methodology of, and potential inequities that may exist in, the allocation of catch of summer flounder between New York State and its neighboring states. My testimony will also address changes in data-collection and management which should be considered to ensure that the best available science informs decision-making, as well as fair and equitable allocation of fishing privileges, relating to this important east coast fishery.

Under the direction of Commissioner Martens, I serve as DEC's marine fisheries director responsible for implementing all management decisions for the state's recreational and commercial fisheries. I have held this position since 2007 and have been with DEC for twenty-six years. I represent DEC Commissioner Martens as New York's Administrative Commissioner for the Atlantic States Marine Fisheries Commission (ASMFC) and the State Official member on the Mid-Atlantic Fisheries Management Council (MAFMC). I am also a member of the faculty at Stony Brook University where I teach graduate level marine fisheries management. Probably as important, I have been a resident of Long Island most of my life and an avid angler since I was a child. Like many youths on Long Island, I knew who the U. S. President was, the pledge of allegiance and that the size limit for fluke was 14 inches.

The summer flounder fishery in New York is vitally important both for economic and recreational reasons. Hundreds of thousands of recreational anglers rely on this important natural resource to provide their sport and a good meal or two. In 2012, New York anglers made 1.35 million fishing trips targeting fluke, which accounted for over 36% of all saltwater fishing trips that year. So, over a third of all saltwater trips in New York's marine district were made for

just one of the species available to catch. Fluke are very important commercially as well. Fluke harvest is tightly controlled, with an annual quota assigned according to the fishery management plan, but fluke are a high-value fish and one of the mainstays of New York's commercial fishery.

### Fluke Catch Allocations: History and Inequities

New York has experienced problems with the allocation of fluke quota among the states since the development of the fishery management plan in 1996. I will focus my remarks on recreational aspects since others will testify on the commercial fishery. However, it is important to note that New York has several hundred Party/Charter Boats and supporting businesses such as Bait and Tackle Shops, Marinas, and other businesses that rely on this fishery for their economic viability.

Up until the mid- 1990's, fluke size limits along the east coast were relatively consistent. A 13 or 14 inch size limit was the norm. However, the fluke population (stock) was in decline at the same time the Magnuson Stevens Act (MSA) was reauthorized in 1996 and instituted deadlines for rebuilding important fishery stocks. This statutory mandate prompted fishery managers to look at alternate management schemes to rebuild depleted stocks. Fluke occur in both state and federal waters and are therefore managed through a joint fishery management plan (FMP) between ASMFC and MAFMC. Complicating management further, the size distribution of fluke along the coast varies with fish to the south tending to be smaller than fish to the north. As the rebuilding plan took hold and size limits were increased, changes to the management plan allowed for "state-by-state conservation equivalency," replacing consistent coastwide measures which had been the norm until the late 1990's. It was decided that each state's recreational harvest limit would be based upon landings in 1998 – the last year for which there were consistent measures along the coast. This allocation resulted in an uneven split among the east coast states which remains problematic to this day: NJ – 39%; NY – 17.6%; Va. – 17.7% other 6 states between 3 – 6% each.

The states, including New York, agreed to try this approach, but at that time New York raised the caveat that we could "change this if it did not work." It did and does not work. The Marine Recreational Fisheries Statistical Survey (MRFFS), which provides the data for key management decisions, was documented in 2006 to have significant flaws. It does not provide

for regional changes in the location of the fluke stock even though the stock has moved further to the north, or changes in effort by anglers along the coast. It set up a dilemma where, if the population shifted or effort increased, a state experiencing a decrease would get fewer fish.

While the states have been locked in a management system based on decisions that occurred over a decade ago, many factors are no longer valid. I believe New York currently has a much higher level of effort now but is locked at 17.6% with no way of determining the actual fishing effort. This violates basic rules of fisheries management: provide for adaptive approaches as a fishery changes and utilize accurate data.

It's important to note here that male fluke have a typical maximum size of 17 inches so most fish larger than this are females. Yet New York's size limit is 21 inches, while New Jersey's limit is 18 inches. So federal fisheries management law has forced the states to violate another basic principle in fisheries management – incredibly, we have been harvesting the large females which are the big egg reproducers for future recruitment. Unfortunately, a well-intended federal law has led to bad fishery management.

We also believe the disparity between our neighboring states has created a situation of non-compliance. Anglers simply do not follow rules that do not make intuitive sense. We believe the population of fluke off Long Island has increased, along with angler effort. This appears to be the primary reason why we have exceeded our 17.6% quota for most of the last decade by as much as 112% but with the highest average of all states at 32%, if you believe MRFSS. This disparity between MSA-based restrictions and available catch has forced New York to annually adjust its size, season and bag limits to adjust for the overage while experiencing a declining then rebuilding stock. By 2009, the New York size limit was 21 inches with a 2 fish bag limit and short season. The neighboring state of New Jersey had an 18 inch size and 6 fish bag limit (Table 1).

The situation has frustrated New York fishery managers and anglers for so long that the New York Attorney General brought a lawsuit in 2008 against NMFS and ASMFC to attempt a correction. Unfortunately, New York was not successful at that time. Senator Schumer has been very active trying to find a solution to the problem and both the state and its anglers thank him for his continued efforts.

The last two years have seen slight improvement but continued frustration for New York since we all have been successful in rebuilding the coastwide fluke stock, but New York's size

limit remained high at 19.5 inches in 2012 and once again, New York has overharvested its quota by 14 % (and New Jersey by 15%) (see Figure 1). Important to note in Figure 1 is the bar graph which shows that the New York and New Jersey overall catch rate is very high but retention rate is low. This means we are catching roughly ten fish for every one we keep. This is not a healthy practice since a good portion of the “throw-backs” die causing unnecessary mortality. However, in December, 2012, ASMFC/MAFMC jointly voted again to continue state-by-state conservation equivalency for 2013 which could result in an increased size limit in New York.

We recently had some good news. At the ASMFC Board meeting on February 21, 2013 the nine states in the fishery agreed to address this issue since the states generally recognize that New York has continued to be disadvantaged in this fishery despite its rebuilt status. As a short term fix for 2013, the seven states that under-harvested will not take their full harvest increases leaving fish from the coastwide quota available for New York. Hopefully, this interstate cooperation will keep our size limits the same as 2012 or even drop the size. A subcommittee has been formed to include key states and the MAFMC to explore long term solutions for 2014 and beyond. Possible approaches include regional conservation equivalency, retention rates, and waterbody limits. The bottom line is that the states have worked together to create innovative solutions outside of the restrictions of the MSA and NMFS.

### Recommendations for Changes in Management

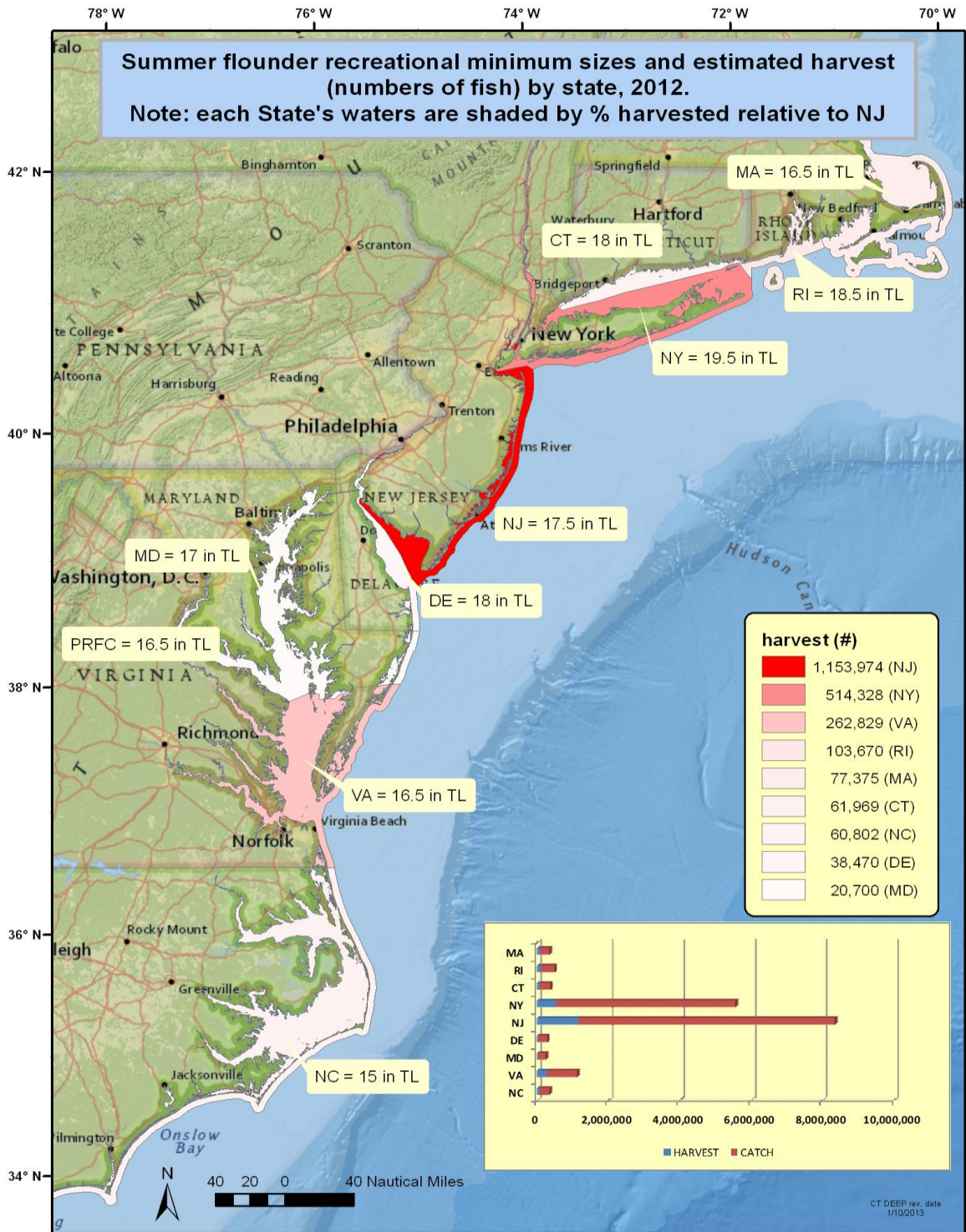
While I am hopeful that we can develop more rational management through the ASMFC/MAFMC process, we have to explore alternative management strategies for fluke and other recreational fisheries. The current MSA has set up a situation where managers must react annually instead of waiting longer periods - say three to five years - before changing the rules. Fish stocks typically do not respond quickly but current management principles mandate quick action. We need to rely on good data and stop implementing annual changes based on short term data so that we can focus on longer term trends. Establishing consistent rules for a region with pre-determined minor adjustments for all states over several years would provide greater stability for fluke and other species management plans. It will also provide more stability for the fishing industry so they can manage their businesses more efficiently. The current Magnuson-Stevens

Act provided some good concepts such as setting Annual Catch Limits (ACL) and Accountability Measure (AM) but again, the quick deadlines to implement these has created other problems such as we have seen with Black Sea Bass and Scup (Porgy). The Science and Statistical Committees of the Councils need for greater latitude to consider ultra-conservative management in the face of limited data may not always be the best course.

We must also avoid setting management decisions in stone since this violates a fundamental principle of fishery management – natural populations fluctuate and we need adaptive and flexible management to address these changes. It is why we, the fishery managers, are in this business. Along with this, we also need to build in a mechanism to establish new baselines as fisheries change. Once we set disproportionate quotas, we lose the ability to get a true measure of effort and harvest. Lastly, we need to recognize and include in future management the flexibility to adapt to the changing environment and resulting shifts in fish populations which appears to be the new norm now and into the future.

On behalf of Governor Cuomo and Commissioner Martens, I thank you again for the opportunity to testify. I will be happy to respond to questions.

**Figure 1.**



**Table 1. Size Limit (inches) and Bag Limit by State and Year**

STATE	YEAR	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
MA	SIZE	16.5	16.5	16.5	16.5	17	17	17.5	17.5	18.5	18.5	17.5	16.5
	BAG	7	7	7	7	7	7	5	5	5	5	5	5
RI	SIZE	17.5	18	17.5	17.5	17.5	17.5	19	20	21	19.5	18.5	18.5
	BAG	6	5	5	7	7	7	7	7	6	6	7	8
CT	SIZE	17	17	17	17	17.5	18	18	19.5	19.5	19.5	18.5	18
	BAG	6	6	6	6	6	6	5	5	3	3	3	5
NY	SIZE	17	17	17	17.5	17.5	18	19.5	20.5	21	21	20.5	19.5
	BAG	7	7	7	3	5	4	4	4	2	2	3	4
NJ	SIZE	16	16.5	16.5	16.5	16.5	16.5	17	18	18	18	18	17.5
	BAG	8	8	8	8	8	8	8	8	6	6	8	5
DE	SIZE	17.5	17.5	17.5	17.5	17.5	17	18	19.5	18.5	18.5	18	18
	BAG	4	4	4	4	4	4	4	4	4	4	4	4
MD	SIZE	17	17	17	16	15	15	15	17	18	19	18	17
	BAG	8	8	8	3	4	4	4	3	3	3	3	3
VA	SIZE	15.5	17.5	17.5	17	16.5	16.5	18.5	19	19	18.5	17.5	16.5
	BAG	8	8	8	6	6	6	5	5	5	4	4	4
NC	SIZE	13/15	13/15	14/15	14	14	14	14.5	15.5	15	15	15	15
	BAG	-/8	-/8	-/8	-/8	8	8	8	8	8	8	6	6