While reading Al Ristori’s Conservation Watch in the January 3, 2008 edition of The Fisherman about the cuts to summer flounder, it’s hard not to think about a tough season ahead. However, the 2008 coast-wide limits are not the real problem.

According to William T. Hogarth, the retiring assistant administrator for fisheries at the National Marine Fisheries Service (NMFS), the season to follow will become the true test of grit.

In a letter to W. Peter Jensen, chairman of the Mid-Atlantic Fishery Management Council (MAFMC), Hogarth wrote: “If the measures implemented by the states to manage the 2008 recreational fishery are not effective to constraining harvest within the recreational harvest limit, NMFS is prepared to close the summer flounder recreational fishery in the Exclusive Economic Zone (EEZ).”

Such a move would effectively shut down the fishery in 2009, ultimately forcing individual states to shut down their own local waters to summer flounder harvest. As Hogarth outlined in his letter, if the individual states go over their allowable landings in 2008, “It is likely that very restrictive measures may be necessary for 2009, and, possibly all of the remaining years of the rebuilding period to ensure that the stock is rebuilt on the schedule required by the Magnuson-Stevens Act.”

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**A LEGAL BATTLE**

Hogarth and fisheries managers essentially have their hands tied on summer flounder limits. It’s certainly not in their collective best interest to rule against fishermen, either commercial or recreational; however, a lawsuit in 1999 brought about by the National Resources Defense Council (NRDC), National Audubon Society, Environmental Defense Fund, and the Center for Marine Conservation (Ocean Conservancy) has forced officials to adhere strictly to federal targets and timeframe, regardless of the species.

As a result of the U.S. Court of Appeals 2000 ruling, NMFS officially was forced to consider stock assessment with the “highest urgency.” As such, the negotiated settlement agreement set TAL at levels with a 50 percent probability or greater chance of reaching targets. More critical to current hard-line fisheries issues than the lawsuit itself, many of the original plaintiffs remained active in pressing politicians to tighten the noose on summer flounder.

Lee Crockett for example, left the Marine Fish Conservation Network (Network) in the summer of 2007 to join the Pew Charitable Trusts’ Environment Group when it merged with National Environmental Trust (NET). As Pew’s Federal Fisheries Policy Reform Project director, Crockett agrees summer flounder stocks are increasing, yet he continues to fight against flexibility.

“Summer flounder levels have increased fourfold, but they are still only about half the size of what scientists consider healthy,” Crockett wrote recently in the Providence Journal. “Even though summer flounder populations have not fully recovered, several powerful fishing groups are urging members of Congress and the National Marine Fisheries Service to let them catch more of the fish, despite contrary recommendations from scientists.”

Pew went on to name names in the fight for the summer flounder fishery, stating officially that “New Jersey anglers, led by the Recreational Fishing Alliance (RFA), wanted to increase the 2008 summer flounder fishing quota. They have been lobbying Congress and Congressman Frank Pallone, Jr. (D-NJ) specifically, to Amend the 10-year rebuilding requirement in the Magnuson-Stevens Act to create some flexibility in the law.”

“These demands for a higher quota are understandable from a short-term economic perspective, but they’ll undermine the long-term health of summer flounder,” Crockett said.

Such an argument doesn’t sit well with recreational anglers, particularly those whose livelihood depends on the summer flounder fishery. “If the stock is always building, what’s wrong with that?” asks Tony Bogan, a fourth-generation boat captain from Brielle, NJ, and representative of the United Boatmen of New Jersey, which represents the for-hire fishing industry in the state.

“If I can rebuild the stock in 20 years to this magic target number and keep people in business at the same time, what’s wrong with that?” Bogan asked.

It is this plea on behalf of businesses and anglers on the Eastern seaboard who rely on a healthy summer flounder fishery, that’s prompted Pallone to enter the fray in direct conflict with the Network. “Based on Dr. Hogarth’s letter, Congress will likely have to pass legislation to fix the summer flounder problem,” Pallone wrote in a letter to Greg Hueth of the newly formed Save the Summer Flounder Fishery Fund (SSFFF). “This could include writing flexibility into the Magnuson-Stevens Fishery Conservation and Management Act or extending the rebuilding deadlines for the summer flounder fishery.”

“It’s not the fish that need saving, they’re okay,” Bogan said of the ever-growing stock of summer flounder. “It’s the fishery, we need to be saved.”

His cousin Ray Bogan, a local attorney who represents the United Boatmen, added, “There is a resource called the human resource, and there is nothing wrong with trying to balance the needs of the human resource with the needs of the fish.”

**MONEY TALKS**

With a domestic and international staff of more than 80 and estimated annual operating revenue of approximately $70 million, the Pew Environment Group is one of the largest environmental advocacy organizations in the world to...
day following its 2007 merger with the NET. Prior to the 2006 elections, Pew had dedicated much of its fiscal resources to campaigning, but the organization has set a target date of this December of 2007 to finalize their merger agreement to begin joint operations.

On November 15, 2007, in a conference call among representative environmental groups including the Marine Fish Conservation Network (Network), Crockett said, “People in New Jersey and other states are trying to use summer flounder as a means to go back in and reopen Magnuson.” According to the Asbury Park Press, when asked if another lawsuit against NMFS is in the wings, Crockett indicated that Pew itself does not litigate environmental cases, but it has financed other groups that do.

In testimony during a 2004 Senate hearing on Magnuson Stevens, Crochet was grilled by the namesake-sponsor of the federal fisheries law, Senator Ted Stevens of Alaska. The Senator had expressed concern over the amount of litigation over fishing issues, stating, “Slowly but surely, the court system is entering into the management of the fisheries.”

As this particular hearing closed, Stevens asked Crockett how many lawsuits the Network entered. “Zero,” Crockett replied. However, when asked if the Network was financed by the Pew Charitable Trusts, Crocket admitted “Partially.”

Pew’s support for fisheries issues, campaigning and legal battles against fishermen is well documented. In 1998, the organization awarded a grant of $1.45 million to the National Resources Defense Council and added another $1.5 million to Earth Justice Legal Defense Fund from 1998 to 2000. Throughout the calendar year 1998, Pew Charitable Trusts doled out more than $885,000 for the Ocean Conservancy. All totaled, that’s nearly $4 million given to organizations directly involved in the ongoing legal battles against fishermen.

At the same time that all this money was being raised for legal battles, Pew also was funding research to support its claim that fisheries were in a state of collapse, while using its public relations arm to trumpet the findings. “A major study published this week in the journal Science documents that roughly one-third of the world’s commercial fisheries have collapsed, and that unless current trends are reversed, all of the world’s commercial fisheries are likely to collapse in less than 50 years,” Joshua Reichert, director of the environment program at the Pew Charitable Trusts, said in referencing the Pew-financed Boris Worm study of 2006 that predicted the global collapse of all fish stocks by the year 2048.

“We better get our fishing in now and savor our favorite seafood, before it’s too late,” said Matt Rand, director of the PEW-funded Conserve Our Ocean Legacy Campaign (COOL) and National Environmental Trust (NET) at the release of the Worm’s report. “According to this study, we only have 50 years until jellyfish will be the catch of the day every day,” said Rand.

According to Rand, “This study is just what the doctor ordered, a real kick in the pants.”

Of course, the study of collapsing fisheries wasn’t what the doctor ordered; it was actually what Pew had ordered in their direct funding of the Lenfest Ocean Campaign established in July 2004 by the Lenfest Foundation and Pew Charitable Trusts. It was Lenfest that has directly financed nearly all of Boris Worm’s doomsday ocean studies.

After the major newspapers and media outlets ran with the collapsing fisheries headlines, it took a few weeks for other scientists to process the Worm data and respond to the findings. “This particular prediction has zero credibility within the scientific community,” said Ray Hilborn, fisheries scientist at the University of Washington, adding that the Worm study cannot be taken seriously.

“One of the stocks they list as collapsed is the Georges Bank haddock stock, which is bigger now than it has been in 40 years,” Hilborn said, explaining that Worm based his study on faulty methodologies, most notably in the use of catch rates as opposed to stock analysis. “The catch is lower simply because the regulations are much tighter,” Hilborn said.

Using Worm’s methodology, when anglers harvest fewer summer flounder in 2008 than in 2007, it will prove that the overall summer flounder stock is collapsing.

SAVING THE SUMMER FLOUNDER FISHERY

Once again, battle lines have been drawn in the fight for the summer flounder fishery. At the joint meeting of the Atlantic States Marine Fisheries Commission (ASMFC) and Mid-Atlantic Fisheries Management Council (MAFMC) on December 11, the total allowable landings for the recreational and commercial sector were approved by an 11-8 vote in the ASMFC, and 7-3 at the MAFMC level. State representatives from Delaware, New York and Connecticut voted for coast-wide limits over the state-by-state equivalency, but that measure failed to get the majority vote.

For summer flounder, the end proposal sent to NMFS for review was the 15.77-million-pound quota, 8 percent less than the 2007 limit of 17.11 million pounds. For Pew Charitable Trusts Environment Group, that’s not nearly enough.

“We don’t think 15.77 is consistent with the Magnuson-Stevens Act requirements for science-based management that prevents overfishing, nor the fluke fishery management plan requirement that the rebuilding plans have a 50 percent chance of success,” Crockett stated, pressing that NMFS void the ASMFC/MAFMC’s choice and instead impose a lower 11.64-million-pound limit in 2008.

“The 15.77 million pounds offered a 75 percent probability of reaching the target,” said Ed Goldman of New Jersey, who sits on the Mid-Atlantic council. “That number didn’t come out of thin air, and we feel it’s legally justifiable.”

“Historically, we have more summer flounder than anyone can remember in 60 years of fishing,” said Bruce Freeman, a retired fisheries scientist from New Jersey. “In three or four years the stock will be doubled, and people
can’t rationalize this. That’s something the current system just doesn’t take into account."

In an effort to fix the current system and add some of that flexibility lost during the 2006 fight over Magnuson-Stevens, North Carolina Congressman Walter B. Jones has introduced HR 4087, The Flexibility in Rebuilding American Fisheries Act of 2007. The bill would amend the Magnuson-Stevens Fishery Conservation and Management Act to allow the 10-year time period for rebuilding fisheries to be extended under certain common-sense circumstances.

"The Magnuson Act’s arbitrary rebuilding schedules are proving harmful to America’s commercial and recreational fishermen and the families, businesses and communities they support," Jones said.

In allowing such flexibility, the bill would provide for timely restoration of healthy fisheries while also ensuring fishermen are not put out of business because of the rigid timelines contained in Magnuson.

"I do not understand why this government would require rebuilding of a fish stock in 10 years even when that causes widespread economic dislocation, when if given a few more years, the fish stock could be rebuilt with minimal economic hardship to fishermen. The lack of common sense here is stunning, and my constituents should not have to bear the burden," Jones said.

HR 4087 would allow fisheries managers to extend the rebuilding timeframe if certain key factors are met, particularly if it becomes necessary to provide for the sustained participation of fishing communities, provided there is evidence that the stock is on a positive rebuilding trajectory.

In terms of summer flounder, that’s precisely what’s taken place, and why SSFFF was formed in New Jersey.

"We need to get a congressional amendment passed quickly to change Magnuson, and then get the science in order to show that we’re not wrong," said Hueth, who’s helping to spearhead the fundraising efforts of the Save the Summer Flounder Fishery Fund at www.ssfff.net.

The SSFFF group understands that the fight to add flexibility is not an easy one, and that it’s equally important to show that science is able to support their claims that summer flounder stocks are truly on an upward path.

According to the outgoing fisheries chief, as long as fishing mortality was being reduced and the stock was rebuilding, there was no need for an arbitrary rebuilding timeframe.

"It’s no secret that the agency and administration would like more flexibility in rebuilding," Hogarth said at a news conference on December 13.

The fight is bigger than just the fisheries management issues, according to Ray Bogan. It’s fighting a bigger adversary: a well-funded environmental industry that wants a moratorium on summer flounder fishing. "They have no qualms about shutting us down," he said.

"For years, one of the thrills people had was catching fish and keeping them for the table," said Dennis Kanyuk, president of the United Boatmen of New York. "We’ve lost that aspect of the fishery."

"The business has been falling off drastically," said Capt. Paul Forsberg of the Viking Fleet in Montauk on Long Island. "We’re being regulated out of this business."