

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

DELMARVA FISHERIES ASSOCIATION, INC.
110 North Cross Street
Chestertown, MD 21620
(Kent County)

**MARYLAND CHARTER BOAT
ASSOCIATION, INC.**
29 Craig Court
Conowingo, MD 21918
(Cecil County)

BRIAN NESSPOR
5642 Walnut Street
Rock Hall, MD 21661
(Kent County)

KENNETH JEFFRIES, JR.
P.O. BOX 1192
Severna Park, MD 21146
(Anne Arundel County)

Plaintiffs,

v.

**ATLANTIC STATES MARINE FISHERIES
COMMISSION**
1050 N. Highland Street, Suite 200 A-N
Arlington, VA 22201,

Defendant

Case No: _____

COMPLAINT

Plaintiff Delmarva Fisheries Association, Inc., (“DFA”) is an IRS § 501(c)(6) not-for-profit fisheries trade association organized in 2016 as a representative of the fishing industry in an around the Chesapeake Bay.

Plaintiff Maryland Charter Boat Association, Inc. (“MCBA”) is also an IRS § 501(c)(6) organization and is the largest professional group of charter boat captains operating “for hire” vessels utilized by recreational individuals or groups on the Maryland Chesapeake Bay. Its mission is to promote sportfishing, sightseeing and cruising throughout the Maryland Chesapeake Bay area to include the Atlantic coastline.

Plaintiff Brian Nesspor is a self-employed commercial fisherman who has been conducting a Striped Bass fishing business on the Chesapeake Bay for over 40 years. He resides at 5642 Walnut Street in Rock Hall, Maryland and is a member of DFA.

Plaintiff Kenneth Jeffries, Jr. is a self-employed Charter Boat Captain who has been conducting a Striped Bass fishing business on the Chesapeake Bay for over 20 years. He is a retired law enforcement officer who resides in Severna Park, Maryland and is a member of MCBA.

Plaintiffs bring this action for declaratory and injunctive relief against Defendant Atlantic States Marine Fisheries Commission (“ASMFC”). Defendant ASMFC is an Interstate Compact authorized by the U.S. Congress in 1942. Pub. L. 77-539 (May 4, 1942). Its 15 member states are (in order from north to south) Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, and Florida.

ASMFC acknowledges that the Atlantic Striped Bass stock is not overfished, and that overfishing is not currently occurring. Nevertheless, ASMFC has just imposed drastic limitations on the Plaintiffs’ livelihood and property in the pursuit of their Striped Bass fishing businesses.

Plaintiffs specifically challenge Addendum II adopted by ASMFC on January 24, 2024, as Amendment 7 to the interstate Fishery Management Plan (“FMP”) as it pertains to the sweeping reductions in commercial and recreational fishing quotas for Atlantic Striped Bass in the Chesapeake Bay and its inland tributaries. (Exhibit A)

INTRODUCTION

1. The Chesapeake Bay is the largest estuary in the United States. The Bay is in the Mid-Atlantic region and is primarily separated from the Atlantic Ocean by the Delmarva Peninsula.

2. The Chesapeake Bay is the single most important economic and recreational resource for the 18 million people who live and work in this vast watershed which, in addition to producing approximately 500 million pounds of seafood each year, is the dominant attraction for appreciators of scenic beauty, restaurant and lodging tourism, recreational boating, and visitors to historical sites.

3. Within the fishing industry, the Atlantic Stripped Bass (*Morone saxatilis*), oftentimes called “rockfish” or “stripers,” is the most iconic and by far the largest fish species in the Chesapeake Bay. Indeed, the Striped Bass is Maryland's official state fish (MD General Provisions Code Ann. § 7-305) and according to the Maryland Department of Natural Resource’s website, is “Maryland's most important commercial and recreational fish species.”

4. In testament to the “historic commercial and recreational importance and economic benefit to the Atlantic coastal States and to the Nation,” the United States Congress in 1984 adopted the Atlantic Striped Bass Conservation Act (Pub. L. 98–61 (Oct. 31, 1984)) to address the fact that “[n]o single government entity has full management authority throughout the range of the Atlantic striped bass.”

5. By this action, Congress asserted substantial control over Atlantic Striped Bass which has previously been administered (since 1942) primarily through the ASMFC Interstate Compact.

6. As will be fully explained herein, the January 24, 2024 action of ASMFC, taken over the opposing votes of the States of Maryland and New Jersey, was: (1) devoid of any scientific or rational factual basis; (2) inconsistent with ASMFC's own Rules and Regulations; (3), and, failed to take into account the economic impact on fishery-dependent industries and other adversely affected Chesapeake Bay businesses and local communities. More specifically pertaining to the Plaintiffs, these actions were taken: (4) in violation of their rights under the U.S. Constitution and other pertinent federal laws; and (5) likewise promulgated in violation of the Maryland Constitution, and other state statutory and common law.

7. The consequence of these illegal, unnecessary, and improperly premised fishing curtailments will be to substantially impair the aggregate commercial fishing opportunities available to the Plaintiffs' member businesses and, with respect to "for hire" charter boats, reduce their business revenue by an estimated 50-65 percent. Unless reversed or substantially modified, this executive action can only accelerate industry consolidation, decrease competition, lead to higher pricing for restauraners and other end users, and, most importantly, hasten the end of these multi-generational family businesses which are at the core of Chesapeake Bay fishing industry and among the most important drivers of economic activity and tourism on the Eastern Shore of the Chesapeake Bay.

8. Most of Plaintiffs, as named or as organizational members, have worked on the waters of the Chesapeake Bay their entire adult lives as, in many instances, have their parents, grandparents, siblings and children. These families are dependent upon the income earned in their fishing businesses for their livelihoods and economic survival.

9. Plaintiffs now seek an order and judgment holding unlawful, enjoining, and setting aside the subject matter of this case (hereafter, the “2024 Striped Bass Addendum” or “Addendum”).

10. The intervention of this Court is necessary to preserve the *status quo* with respect to the Stripped Bass quotas because the unconstitutionally promulgated Addendum will irreparably harm Plaintiffs if allowed to go into effect, as scheduled, on May 1, 2024.

11. Absent immediate relief on these claims, many of the Plaintiffs, who are overwhelmingly small and medium-sized family businesses, will be forced out of business as a direct consequence of this illegitimate governmental action which, through its public announcement alone, has already caused charter cancellations for the upcoming fishing season.

12. In addition to the U.S. and State constitutional infirmities that are fatal to the 2024 Striped Bass Addendum, portions of the Addendum also violate standard regulatory requirements as set forth, for example, in the U.S. Administrative Procedure Act (“APA”) (5 U.S.C. §§ 551–559) and its state equivalents (MD. State Government Code Ann. §§ 10-106 (2021)).

PARTIES

13. Plaintiff DFA, located in Chestertown, Maryland, is a 501(c)(6) fisheries trade association established to protect, defend, and enhance the commercial fishing industry in the Delmarva region of the United States for its members as well as future generations while maintaining healthy and sustainable stocks of fish. As a § 501(c)(6) organization, DFA has standing as an adversely affected party to appear on behalf of its members.

14. Plaintiff MCBA is located in Conowingo, Maryland. Its membership consists of approximately 400 “for hire” vessels — primarily medium-sized, family-run boats — employing 1,500-1,600 operators and crew in the Bay from the Virginia line to the Delaware state line. As a

§ 501(c)(6) organization, MCBA has standing as an adversely affected party to appear on behalf of its members.

15. Plaintiff Brian Nesspor is a commercial fisherman residing in Rock Hall, Maryland who has been conducting a Striped Bass fishing business in the Chesapeake Bay; as such he is fully subject to the new commercial quota limitations imposed by the 2024 Striped Bass Addendum. (Exhibit B)

16. Plaintiff Kenneth Jeffries, Jr. is a commercial fisherman residing in Severna Park, Maryland who has been conducting a “for hire” Charter Boat fishing business for Striped Bass on the Chesapeake Bay for over 20 years; as such he is fully subject to the new recreational quota limitations imposed by the 2024 Striped Bass Addendum. (Exhibit C)

17. Defendant ASMFC is a consortium of state governmental entities headquartered in Arlington, Virginia with membership and purported voting rights also accorded to the National Oceanic and Atmospheric Administration (“NOAA”) and the U.S. Fish and Wildlife Service (“USFWS”) which are regulatory agencies, respectively, within the U.S. Department of Commerce (15 U.S.C. § 9442) and U.S. Department of the Interior (16 U.S.C. § 742a) in Washington, D.C.

JURISDICTION AND VENUE

18. This Court has subject-matter jurisdiction because this case arises under the Constitution and laws of the United States. U.S. Const. Art. III, § 2, Clause 1 (Maritime and Controversies between a State and Citizens of another State); 28 U.S.C. §§ 1331, 2201; 5 U.S.C. §§ 701–706.

19. This Court has subject matter because this case arises under the Constitution and laws of the United States. U.S. Const. Art. I, § 10, Clause 3 (Interstate Compacts); 28 U.S.C. §§ 1331, 2201; 5 U.S.C. §§ 701–706.

20. This Court has subject matter because this case arises under the Constitution and laws of the United States. U.S. Const. 14th Amendment (Due Process of Law); 28 U.S.C. §§ 1331, 2201; 5 U.S.C. §§ 701–706.

21. This Court has subject matter because this case arises under the Constitution and laws of the United States. U.S. Const. 5th Amendment (Taking of Property); 28 U.S.C. §§ 1331, 2201; 5 U.S.C. §§ 701–706.

22. This Court has subject matter because this case arises under the Constitution and laws of the United States. U.S. Const. 5th Amendment (Deprivation of Livelihood); 28 U.S.C. §§ 1331, 2201; 5 U.S.C. §§ 701–706.

23. This Court has subject matter jurisdiction under 42 U.S.C § 1983 which provides as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

24. This Court is authorized to award the requested relief under 5 U.S.C. § 706; 28 U.S.C. § 1361; and 28 U.S.C. §§ 2201–2202.

25. Venue is proper in this District because Defendant includes numerous States and participating United States agencies, and Plaintiffs are located, in this District. 28 U.S.C. § 1391(e)(1).

Derivation of Plaintiffs' Rights

26. Over the last 70 years, administrative agencies at all levels of government have performed an ever-expanding variety of government functions and imposed more regulations than

could possibly have been imagined upon the enactment of the APA in 1946 and its State equivalents.

27. The APA and comparable state laws were adopted to establish a set of procedural rules to govern this non-legislative form of governmental decision-making and, of even greater significance, to provide an effective method to preserve individual rights against the abuse of administrative power and, most importantly of all, to preserve the right to judicial review of agency actions.

28. As an Interstate Compact, however, ASFMC has vigorously asserted that despite the fact that the U.S. Congress ratified its creation in 1942 (Pub. L. 77-539), that, as noted, representatives of federal agencies cast votes in ASMFC proceedings, that the Commission's budget is over 90 percent federally funded, and that its pronouncements are enforced by federal authorities, that it is nonetheless exempt from coverage under the APA. *State v Atlan. States Marine Fisheries*, 609 F.3d 524 (2nd Cir. 2010); *see also, United States v. Saunders*, No. 15-4498 (4th Cir. 2016).

29. In addition to the foregoing federal imprint, the USFWS acts as the *primary research agency* for ASMFC. ASMFC Compact & Rules and Regulations, Art. VII (February 2016).

30. As residents and thus citizens of the State of Maryland, Plaintiffs, as individuals or organizational members, have no State procedural rights that they can feasibly assert against the States where they do not reside and which, acting in concert through the ASFMC, have deprived them of their constitutional rights over the voting objection of the State where they do reside and are citizens thereof.

31. Individual Plaintiffs and their organization’s members are, however, also citizens of the United States and, as such are entitled to protection under the 14th Amendment to the U.S. Constitution which provides that:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law.

32. Individual Plaintiffs and their organizations’ members, as citizens of the United States, are also entitled, of course, to protection under the 5th Amendment to the U.S. Constitution providing that: “No person shall ... be deprived of life, liberty, or property, without due process of law.”

33. Further putting to rest any contention that ASMFC is not subject to constitutional challenge as to its actions, Plaintiffs invoke 42 U.S.C. 1983 as referenced in ¶ 23 above.

I. No Scientific or Rational Basis to Support the 2024 Striped Bass Addendum

34. According to its documents, the basis for ASMFC’s reduction in the 2024 fishing ratios was that “In 2022, total Atlantic striped bass removals commercial and recreational, including harvest, commercial discards and recreational release mortality) were estimated at 6.8 million fish, which is a 32% increase from 2021 total removals.” *Atlantic Striped Bass*, Atlantic States Marine Fisheries Commission: <https://www.asmfc.org/species/atlantic-striped-bass> (2024).

35. At the same time, however, the same ASMFC report states that the Chesapeake Bay Striped Bass removals are steadily declining.

Chesapeake Bay removals in numbers of fish for 2017 and 2020-22. (*Id.*)

Year	Commercial Removals	% Change from 2017	Recreational Removals	% Change from 2017	Total Removals	% Change from 2017
2017	479,547	-	2,014,068	-	2,493,615	-
2020	526,667	+10%	1,503,357	-25%	2,030,024	-19%

2021	596,314	+24%	1,051,766	-48%	1,648,080	-34%
2022	551,520	+15%	1,022,212	-49%	1,573,732	-37%

36. As is evident, insofar as the Chesapeake Bay area is concerned, ASMFC’s own numbers show the number of Striped Bass taken out of the waters are not just declining but are now 37 percent below the comparable figure from 2017. Nevertheless, the 2024 Striped Bass Addendum will have its most adverse impact in the very area performing the best in terms of Striped Bass conservation.

37. In addition to ignoring its own numbers, ASMFC chose to disregard consistent industry-produced research which was included in the administrative record by way of the December 19, 2023 Comment Letter submitted by Plaintiff MCBA. The industry methodology utilizes the same electronic reporting system as does the ASMFC (FACTS¹) but does so on a first-hand and more specific basis.

38. These results fully confirm that Striped Bass extraction from the Chesapeake Bay is not only continuing to decline but remains well below pre-COVID levels:

Year	Charter Boat “for hire” Removals	% Change from 2021
2021	121,771	
2022	116,581	-.9%
2023	101,043	-17%

39. Under federal law, conservation of fishing policy by commissions such as ASMFC must be based “on the best scientific information available” (16 U.S.C. § 5104 (a)(2)(A); (16

¹ The Fishing Activity & Catch Tracking System (FACTSTM) is an online harvest reporting system developed and administered by the Maryland Department of Natural Resources for the use of Maryland commercial watermen.

U.S.C. § 1801(c)(e)). This has clearly not been the case with respect to the 2024 Striped Bass Addendum at the core of this case.

40. ASMFC’s own documents reported that during the last conducted measuring year (2021), Striped Bass stock was “no longer experiencing overfishing.” species - Atlantic States Marine Fisheries Commission (asmfc.org) (p.1.)

41. Likewise, from its own documents published less than 60 days ago, ASFMC reported that “striped bass Atlantic Ocean habitats” are not a Fish Habitat of Concern. https://asmfc.org/files/Habitat/FHOC_Designations_January2024.pdf (p. 9).

42. In the face of all this positive data, ASMFC nevertheless set forth, as the purported “best scientific information available” for the new limitations at issue here, the following:

These estimates of *preliminary* 2022 removals and updated stock *projections* were presented to the Board in May 2023... Since striped bass catch and F [mortality] rates *vary* from year-to-year (even under the same regulations), the average F from 2019-2022 (excluding 2020 due to *uncertainty* associated with COVID-19 impacts) was applied to 2023-2029 in the *new projections*. Under this F rate, the *new projections estimate the probability* of rebuilding SSB to its target by 2029 drops from 97% to 15% (Striped Bass Addendum II, *Id.* at 2) (Emphases added.)

43. In short, these new requirements threatening the livelihood of hundreds of fishing businesses, thousands of their employees and other working-class jobs in small towns and other communities throughout the Eastern Shore are premised on verbiage such as: “preliminary,” “new projections,” “estimate,” “mortality rates [which] vary from year-to-year,” “uncertainty”, and “probability.”

44. This narrative mishmash lacks any objective or reasonably measured criteria let alone the “best scientific information,” as required by law. 16 U.S.C. § 5104 (a)(2)(A).

45 It is also instructive to note that ASMFC further admits that “these projections are not the same as a full stock assessment update where the model would be re-run to include the 2022 catch-at-age and index data.” (Striped Bass Addendum II, *Id.* at 2).

46. All of this, again employing such amorphous terminology as “partial,” “preliminary,” “variable,” “uncertain, and “possible” is then strung together for a future “projection” that might or might not happen in 2029.

47. Lastly on this point, even if the Addendum’s research were accurate, which it is not, ASMFC’s has in no manner substantiated the threshold proposition that any identifiable Striped Bass problem can be attributed to the Chesapeake Bay fishing activities of the actual Plaintiffs in this case who bear the brunt of its impact.

II. ACSFC Violated Its Own Rules in Adopting the 2024 Striped Bass Addendum

48. ASFMC’s voting bylaws provide that “No recommendation shall be made by the Commission in regard to any species of fish except by the affirmative vote of a majority of the *compacting states* which have an interest in such species.” Art. VI (Emphasis added.)

49. As noted *supra*, the ASMFC vote on the 2024 Striped Bass Addendum was 14-2.

50. As part of this vote, the states of Florida, Georgia and South Carolina did not participate as a consequence of not having the requisite interest; Maryland and New Jersey voted “no.” How then did the affirmative votes of only ten “compacting” states reach 14?

51. The answer is that the District of Columbia, Potomac River Fisheries Commission (PRFC), USFWS, and NOAA voted on the measure even though none of these entities are “compacting states” as specified in the applicable ASMFC voting rules let alone the two Acts of Congress ratifying or amending the Atlantic seaboard interstate fisheries compact. Pub. Law 77-539 (May 4, 1942); Pub. Law 81-721 (Aug. 19, 1950).

52. This violation of the ASMFC voting bylaws is not just some form of harmless error that can be cured by subtracting four from 14 and still reaching an affirmative result. The multiplicity of ineligible participants in both the vote and discussion prior thereto represents prejudicial conduct and, at a minimum, requires the public notice, comment period and arising ASMFC deliberation and voting to be restarted.

53. During this period, elementary fairness requires that the 2024 Striped Bass Addendum be stayed.

III. Economic Impact Analysis Does Not Support the 2024 Striped Bass Addendum

54. The Magnuson-Stevens Fishery Conservation and Management Act of 1976 (“MSA”) governs the management of marine fisheries in U.S. waters. 16 U.S.C. 38 §§ 1801 *et seq.* 2014.

55. In addition to its conservation goals, the MSA’s Congressional findings state that “Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation.” 16 U.S.C. § 1801(a)(3).

56. Courts interpreting this legislation regularly refer to the MSA as setting forth the “twin goals of conserving our nation’s aquatic resources and *allowing U.S. fisheries to thrive.*” *Oceana, Inc. v. Pritzker*, 26 F. Supp. 3d 33, 36 (D.D.C. 2014). (Emphasis added.)

57. When operating under this all-inclusive fishery statute, no federal or state administrative agency and, by definition, no interstate compact of the foregoing is allowed to pursue one of these goals to the exclusion of the other.

58. This balancing requirement pertains equally and specifically in this instance under the Atlantic Striped Bass Conservation Act of 1984 which declares the following: “Atlantic striped

bass are of historic commercial and recreational importance *and economic benefit* to the Atlantic coastal States and to the Nation.” 16 U.S.C. § 1551(a)(1). (Emphasis added.)

59. Again, leaving no room for doubt that economic impact must pertain, federal law applicable to ASMFC under the MSA, *inter alia*, specifically provides that:

a fishery impact statement for the plan or amendment (in the case of a plan or amendment thereto submitted to or prepared by the Secretary after October 1, 1990) which shall assess, specify, and analyze the likely effects, if any, including the cumulative conservation, economic, and social impacts, of the conservation and management measures on, and possible mitigation measures for— *participants in the fisheries and fishing communities affected by the plan or amendment*> 16 USC § 1853(a)(9)(A). (Emphasis added).

60. In *pro forma* response to this requirement the ASMFC’s public comment document makes this dismissive comment as to Plaintiffs’ livelihoods:

A reduction in effort could translate into a short-term negative impact on the regional economy and businesses associated with the fishing industry for this species. Importantly, this is likely only a short-term response, and stock dynamics will dictate any longer-term effects on the resource and the angling community... For the commercial sector, changes in quota could also have economic impacts due to a change in total poundage. A reduction in quota would likely reduce profits and may increase the consumer price of striped bass. Striped Bass Addendum II. (*Id.* at 6).

61. At the December 6, 2023 Public Hearing on Atlantic Striped Bass Draft Addendum II held in Annapolis, MD, Plaintiffs and numerous other adversely affected parties avowed in person and in writing that the negative economic impact would be immediate, substantial and far from “short -term” as to their particular businesses.

62. The administrative record in this case includes the explicit and expert comments of Maryland’s, ASMFC designee, Michael Luisi, a Natural Resource Biologist and Assistant Director and Fisheries Manager within the Maryland Department of Natural Resources (DNR), warning the Commission that limiting Maryland’s charter boat clients’ catch to one fish a day “will put people

out of business.” *Bay Journal* “Striped Bass Harvest Restrictions Trigger Widespread impact,” Feb. 26, 2024 updated Mar. 1, 2024.

63. Notwithstanding the pointed and timely submission of these public comments, there is nothing in the administrative record, including the below-referenced 1,000-pages of current documentation² indicating that ASMFC gave any serious consideration to the economic implications (i.e., “real-world” consequences) of its action insofar as the Chesapeake Bay economy is concerned.

64. By way of example, for the Chesapeake Bay purposes, the Addendum divides the limitations as between commercial and recreational participants but fails to appreciate or understand the role and significance of the in-between third category consisting of “for-hire” commercial charter boats utilized by recreational fishers. Plaintiff MCBA made it clear in its December 19, 2023 comment letter to ASMFC regarding Addendum II that most of its customer base “would not book trips” if the permissible catch is reduced to one per person. *See* Declaration of Brian Hardman (Exhibit D). *See also* Declaration of Robert Bramble, Jr. (Exhibit E).

65. In a process such as this, governmental agencies must show that they have taken under view the relevant concerns of affected entities and considered regulatory alternatives that would similarly serve the agency’s goals via a “less restrictive, yet easily administered” option. *Wilderness Watch, Inc. v. U.S. Fish & Wildlife Serv.*, 629 F.3d 1024, 1039 (9th Cir. 2010).

66. As advanced by Plaintiffs, retaining the current two fish limitation is a modest proposal with negligible impact to the overall plan but a matter of enormous financial impact to the Plaintiff.

² 2022 Atlantic Striped Bass Stock Assessment Update Report Appendices (Nov. 2022); 2022 Atlantic Striped Bass Stock Assessment Update Report; including May 2023 Supplemental Report (Nov. 2022); and, the Atlantic Striped Bass Stock Assessment Overview (Nov. 2022).

67. It is, moreover, easily enforceable through the onboarded FACTS™ tracking system.

68. Failure to take this alternative approach under consideration represents arbitrary, capricious and illegal action on the part of ASMFC.

69. By way of further example with respect to the Chesapeake Bay commercial fishing limitations, the Addendum, as finalized, fails to take into consideration that the 7 percent reduction adopted for 2024 is cumulative to prior reductions such as the 14 percent reduction in in 2013.

70. In addition and has consistently been argued for many years before ASMFC, its commercial quotas are inherently flawed because they do not distinguish between coastal and Chesapeake Bay commercial fishing interest as these are two very distinct ecosystems.³

71. In this regard the ASMFC commercial harvest reductions unfairly impact Chesapeake Bay commercial fishermen where the stock exists year-round as well as migratory.

72. Failure to take into consideration and tailor these distinctions between Chesapeake Bay Striped Bass stock and the coast-wide stock into the Addendum represents arbitrary, capricious and illegal action on the part of ASMFC.

IV. Infringement of U. S. Constitutional Rights

73. It is well established under constitutional principles that a 5th Amendment taking may be the actual seizure of property by the government, or in the form of a “regulatory taking,” which occurs when the government restricts a person’s use of their property to the point of it constituting its seizure. *David H. Lucas, v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

74. That is precisely the situation in this case.

³ See, e.g., Maryland DNR Response to 2014 Chesapeake Bay Striped Bass: “Because the Chesapeake Bay is a producer area, the fisheries working within the Bay have access to striped bass that are of a smaller size than the large migrant fish that range along the coast.”

75. “There is no dispute that the ‘takings’ clause applies equally to personal property as well as realty.” *Horne v. Dep’t of Agriculture*, 576 U.S. 351 (2015).

76. That is precisely the situation in this case as to the vessels and other business property of the individual Plaintiffs and the organizational Plaintiffs’ members.

77. The Supreme Court has also specifically held that the ability of individuals to practice their chosen profession cannot be revoked by government action without due process *Greene v. McElroy*, 60 U.S. 474 (1959).

78. That is also precisely the situation in this case.

79. Beyond the named Plaintiffs in this case, there will and already has been materially negative impact on the local communities adjoining the Chesapeake Bay as a consequence of ASMFC’s adoption of the 2024 Striped Bass Addendum. (Exhibit F).

80. A cost-benefit analysis has long been the dominant method of systematic analysis for evaluating government policymaking decisions which may sometimes appear to come into conflict, but there is no record of this Due Process obligation having been undertaken by ASMFC with respect to the Addendum.

81. “A regulation is arbitrary and capricious if the agency ‘failed to consider an important aspect of the problem.’” That “includes, of course, considering the costs and benefits associated with the regulation.” And as part of that cost-benefit analysis, the agency must identify benefits that “bear a rational relationship to the . . . costs imposed,” *Chamber of Commerce of the USA, et al. v. SEC*, Docket No. 23-60255 (5th Cir., Oct. 31, 2023).

82. There is a substantial public interest where, as here, governmental agencies have failed to abide by the federal laws that govern their existence and operations.” *Texas v. United States*, 40 F.4th 205, 229 (5th Cir. 2022).

V. Infringement of Maryland Constitutional Rights

83. The Constitution of the State of Maryland provides that any injury done to “person or property, ought to have remedy by the course of the Law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the land.” Article 19.

84. As already noted, the U.S. Constitution also prohibits any State (or compact of States) from depriving any person of any rights, privileges, or immunities secured by the Constitution and laws of the United States. 5th and 14th Amendments.

85. Any suggestion that ASMFC exists as some exception to constitutional protections and can thus also override the express position of the State of Maryland without providing due process of law is without merit.

86. Neither the Fourth Circuit nor the Supreme Court has adopted the position that the APA does not apply to Interstate Compacts. *Potomac Constr. Co. v. Wash. Metro. Area Transit Auth.*, Civil Case No.: GLS-21-193 (D. Md. Apr. 16, 2021).

87. For these reasons, the above-described abridgement of the Plaintiffs’ rights and privileges must be overturned and the ASMFC process reinstated in a manner that incorporates cost-benefit analysis requirements and advances no fishery quota changes or other limitations except in the least burdensome fashion.

First Count

(U.S. Constitution – 5th and 14th Amendments)

88. Plaintiffs repeat, reallege, and re-emphasize the allegations set forth in Paragraphs 1 through 87 as if set forth herein full, and as the basis for this claim.

89. Defendant and its compacting States consisting of Connecticut, Delaware, Maine,

Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Rhode Island, Virginia, plus the District of Columbia have caused Plaintiffs to be deprived of their rights to property and livelihood secured and guaranteed under the Fifth and Fourteenth Amendments of the United States Constitution without Due Process of Law.

90. Defendant palpably abused its governmental authority through actions which were in all regards arbitrary, capricious, unreasonable, overly broad and otherwise wrongful in violation of the U.S. Constitution and other applicable federal law.

91. The interests of Plaintiffs have been adversely affected and manifest injustice has resulted from Defendant's arbitrary, capricious, and unconstitutional actions.

Second Count

(Civil Rights Act of 1871 - 42 U.S.C. § 1983)

92. Plaintiffs repeat, reallege, and re-emphasize the allegations set forth in Paragraphs 1 through 91 as if set forth herein full, and as the basis for this claim.

93. Defendant and its compacting States consisting of Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Rhode Island, Virginia, plus the non-qualified District of Columbia were at all times and in all events relevant hereto, acting under the color of state law.

94. The actions of Defendant, in violation of 42 U.S.C. § 1983, were performed under the color of authority of state law and have caused Plaintiffs to be deprived of their rights to property and livelihood secured and guaranteed under the Fifth and Fourteenth Amendments of the United States Constitution without Due Process of Law.

95. Defendant palpably abused its governmental authority through actions were in all regards arbitrary, capricious, unreasonable, overly broad and otherwise wrongful in violation of

Plaintiffs' federal and state constitutional rights.

96. The interests of Plaintiffs have been adversely affected and manifest injustice has resulted from Defendant's arbitrary, capricious, and unconstitutional actions.

Third Count

(Maryland Constitution – Article 19)

97. Plaintiffs repeat, reallege, and re-emphasize the allegations set forth in Paragraphs 1 through 96 as if set forth herein full, and as the basis for this claim.

98. Defendant, acting by and through the States of Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New York, North Carolina, Pennsylvania, Rhode Island, Virginia, and the District of Columbia have caused Plaintiffs to be deprived of their rights to property and livelihood secured and guaranteed by Article 19 of the Constitution of the State of Maryland.

99. Defendant palpably abused its governmental authority through actions were in all regards arbitrary, capricious, unreasonable, overly broad and otherwise wrongful in violation of state constitutional rights, other state laws and common laws.

100. The interests of the individual Plaintiffs and the organizational Plaintiffs' members have been adversely affected and manifest injustice has resulted from Defendant's arbitrary, capricious, and unconstitutional actions.

REQUESTED RELIEF

WHEREFORE, Plaintiffs respectfully request an order and judgment in their favor and against the Defendant comprising the following:

1. An order and judgment holding unlawful, enjoining, and setting aside the ASMFC 2024 Striped Bass Addendum approved on January 24, 2024, as unconstitutional or illegal on other impermissible grounds;

(a) or, in the alternative, an order and judgment holding unlawful, enjoining, and setting aside the ASMFC 2024 Striped Bass Addendum approved on January 24, 2024, as it pertains to recreational fishing in the Chesapeake Bay;

(b) or, at a minimum, an order and judgment holding unlawful, enjoining, and setting aside the ASMFC 2024 Striped Bass Addendum approved on January 24, 2024, as it pertains to the 1-fish bag limitation as applicable to the Plaintiffs' "for hire" charter boats operating in the Chesapeake Bay;

(c) or, in the alternative, an order and judgment holding unlawful, enjoining, and setting aside the ASMFC 2024 Striped Bass Addendum approved on January 24, 2024, as it pertains to commercial fishing in the Chesapeake Bay;

(d) or, at a minimum, an order and judgment holding unlawful, enjoining, and setting aside the ASMFC 2024 Striped Bass Addendum approved on January 24, 2024, as it pertains to the 7 percent reduction applicable to commercial fishing boats operating in the Chesapeake Bay;

2. Costs and attorneys' fees pursuant to any applicable statute or authority; and

3. Any other relief that the Court deems just and appropriate.

Respectfully submitted,

/s/ Andrew C. Meehan

Andrew C. Meehan

Bar No. 26615

MacLeod Law Group, LLC
110 North Cross Street
Chestertown, Maryland 21620
Tel: (410) 810-1381
ameehan@mlg-lawyers.com

/s/ James J. Butera

James J. Butera

MEEKS, BUTERA & ISRAEL PLLC

2020 Pennsylvania Avenue, NW

Washington, DC 20006

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jbutera@meeksbi.com

(Admission *pro hac vice* pending)

Attorneys for Plaintiffs

ASMFC Atlantic Striped Bass Board Approves Addendum II

Establishes Measures to Continue Progress Towards Stock Rebuilding

Arlington, VA – The Commission’s Atlantic Striped Bass Management Board approved Addendum II to Amendment 7 to the Interstate Fishery Management Plan (FMP) for Atlantic Striped Bass. The Addendum modifies recreational and commercial measures to reduce fishing mortality in 2024, establishes an expedited response process to upcoming stock assessments, and addresses requirements for recreational filleting. Addendum II builds upon the 2023 emergency action by changing the measures in the FMP to reduce fishing mortality and support stock rebuilding. Addendum II measures will replace the emergency action measures upon its implementation by the states by May 1, 2024.

“First and foremost, thank you to the 2,000 members of the public who submitted public comments. The Board had difficult issues to discuss, and public comments were a crucial part of the deliberations,” said Board Chair Megan Ware from Maine. “The Board remains focused on rebuilding the stock by 2029. The upcoming 2024 stock assessment will be an important checkpoint on progress toward rebuilding.”

For the ocean recreational fishery, the Addendum implements a 28” to 31” slot limit, 1-fish bag limit, and maintains 2022 season dates for all fishery participants; this maintains the same ocean recreational measures adopted under the recent emergency action. For the Chesapeake Bay recreational fishery, the Addendum implements a 19” to 24” slot limit, 1-fish bag limit, and maintains 2022 season dates for all fishery participants. For the commercial fishery, the Addendum reduces commercial quotas by 7% in both the ocean and Chesapeake Bay.

To address concerns about recreational filleting allowances and compliance with recreational size limits, the Addendum establishes two requirements for states that authorize at-sea/shore-side filleting of striped bass: racks must be retained and possession limited to no more than two fillets per legal fish.

To enable an expedited management response to upcoming stock assessments prior to the 2029 rebuilding deadline, the Addendum establishes a mechanism allowing the Board to respond to a stock assessment via Board action if the stock is not projected to rebuild by 2029.

States must submit implementation plans by March 1, 2024, for Board review and approval, which will take place at a special Board meeting to be scheduled for later in March. All Addendum II measures must be implemented by May 1, 2024.

EXHIBIT A

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

DELMARVA FISHERIES ASSOCIATION INC.,

et al.

Plaintiffs,

v.

ATLANTIC STATES MARINE FISHERIES
COMMISSION

Defendants.

Case No: _____

DECLARATION OF BRIAN NESSPOR

In accordance with 28 U.S.C. § 1746, Brian (Beef) Nesspor offers the following declaration:

1. I started in the fishing business at the age of 13 and have worked in this business for approximately 50 years.
2. I am a sole proprietor operating out of Rock Hall, MD, which borders the Chesapeake Bay.
3. My residence is 5642 Walnut St., Rock Hall, 21661.
4. I operate a state-licensed commercial fishing business using a 50-foot vessel with a crew one or two individuals per outing.
5. I primarily fish for Stripped Bass which I sell to a dealer upon returning to land.
6. I am a member of the Delmarva Fisheries Association, Inc.
7. I am a former member of the Rock Hall Town Council.

EXHIBIT B

9. My testimony herein is based upon my personal knowledge gained in the ordinary course of business over many years.

10. The availability of Striped Bass across the Chesapeake Bay is abundant and has been for the for at least the last 3-5 years.

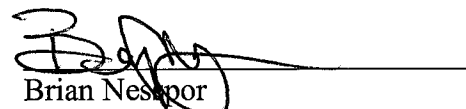
11. Over this period, however, the Striped Bass commercial fishing business has incurred difficulties for a number of reasons including falling prices, increased operating expenses (especially petrol products), and decreased fishing opportunities due to lower poundage quotas and other governmental limitations.

12. With respect to the additional Stiped Bass limitations issued by the Atlantic States Marine Fisheries Commission (ASMFC) scheduled to take effect on May 1, 2024, I can state the following:

- (a) The additional seven percent quota reduction is contrary to what we were told would be the case for 2024.
- (b) The price per pound for Striped Bass is less now than it was two years ago due to various factors, including the plentiful availability of Striped Bass.
- (c) The combination of the price of goods going up 8-10% annually and the fishing quota being lowered by 7%, means there will be a substantial reduction in earnings no matter how hard you work in 2024.
- (d) For family businesses, which are the historical pattern and still the most typical for Chesapeake Bay fishing companies, there is no future livelihood if current trends continue.

I declare under penalty of perjury under the laws of the United States of America that the facts contained herein are true and correct.

Executed on March 4, 2024.


Brian Nespor

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

DELMARVA FISHERIES ASSOCIATION INC.,
MARYLAND CHARTER BOAT ASSOCIATION, INC.,
BRIAN NESSPOR,
KEN JEFFRIES

Plaintiffs,

v.

ATLANTIC STATES MARINE FISHERIES
COMMISSION

Defendant.

Case No: _____

DECLARATION OF KEN JEFFRIES

In accordance with 28 U.S.C. § 1746, Ken Jeffries offers the following declaration:

1. My name is Ken Jeffries and I am the owner/operator of Sellfish Charters.
2. Sellfish Charters a is a fishing business based in Severna Park, MD, which borders the Magothy river to the Chesapeake Bay.
3. Established in 2003, the Sellfish Charters is a state-licensed “for hire” charter boat business utilizing an Evans 42-foot vessel with a capacity for 22 recreational fishers.
4. The crew will consist of myself and usually one other individual.
5. 95 percent of my customers are interested only in in fishing for Striped Bass.
6. I am a member of the Maryland Charter Boat Association.

EXHIBIT C

7. I am a former police officer for the City of Baltimore.
8. My testimony herein is based upon my personal knowledge gained in the ordinary course of business over 20 years.
9. The availability of Striped Bass across the Chesapeake waters where Sellfish Charters operates has never been more plentiful.
10. At this same time, however, the charter boat business has become increasingly difficult for a number of reasons such as rising diesel fuel and other operating expenses.
11. But the principal problem remains governmental limitations such as the prior reductions in the length of the Striped Bass fishing season, size limitations on catch, etc.,
12. Added to this, like so many other small businesses in our community, we have yet to fully recover from the COVID years.
13. With respect to the additional Stiped Bass limitations issued by the Atlantic States Marine Fisheries Commission (ASMFC) scheduled to take effect on May 1, 2024, I can state the following:
 - (a) This is another and much more serious and, at least to me, a completely unexpected setback to our industry's ability to earn a living in 2024.
 - (b) I have received many inquiries from existing and potential customers and, unfortunately, already some cancellations from some customers who had booked for the 2024 season.
 - (c) Their reason for cancelling has been the public announcement of the new rules cutting individual Striped Bass daily intake from two to one fish per person.
 - (d) My estimate is that business revenues for the year could decline up to 60% if these rules are not changed back to the 2023 limits.

- (e) In addition to the income loses, property values, business equipment, other inventory value, etc. will all be diminished by declines in chartering activity.
- (f) I have also received calls of concern from the many fishing-related businesses and other visitor services which stem from these group outings.
- (g) Local individuals acting as mates, some 15 with years of helping on my boat, will have no other employment opportunities for their marine skills.

I declare under penalty of perjury under the laws of the United States of America that the facts contained herein are true and correct.

Executed on March 1, 2024.



Ken Jeffries

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

**DELMARVA FISHERIES ASSOCIATION INC., and
MARYLAND CHARTER BOAT ASSOCIATION,
INC.**

Plaintiffs,

v.

**ATLANTIC STATES MARINE FISHERIES
COMMISSION**

Defendants.

Case No: _____

DECLARATION OF BRIAN L. HARDMAN

In accordance with 28 U.S.C. § 1746, Brian L. Hardman offers the following declaration:

1. I am the Owner/Operator of Lead Dog Charters LLC.
2. Established in 2006, Lead Dog Charters is located in Stevensville, Maryland, a town which is in close proximity to the Chesapeake Bay.
3. Lead Dog Charters is a state-licensed, full-service "for hire" fishing vessel.
4. I am a member and President of one or both Plaintiffs named in this case.
5. I have worked in this line of business since 1988.
6. In addition to myself as boat captain, there would ordinarily be 2-3 mates serving on the crew.
7. During 2023, my company conducted approximately 187 partial and full-day "for hire" boating trips.

EXHIBIT D

8. At least 90 percent of my rental customers are interested in striped bass fishing as opposed to other types of fish available in the Chesapeake Bay.

9. My testimony herein is based upon my personal knowledge and a review of records kept in the ordinary course of business.

10. With respect to new striped bass limitations issued by the Atlantic States Marine Fisheries Commission (ASMFC) scheduled to take effect on May 1, 2024, I can state the following:

- (a) I had no notice in advance that the ASMFC was going to cut in half the number of fish my customers will be allowed to catch.
- (b) When I read the notice, I was very surprised because the bass supply in the Chesapeake Bay has been plentiful over the last several years.
- (c) The charter business in our community has yet to fully recover from the COVID years.
- (d) Word of the new limits has already filtered out and I have been receiving many calls from my regular customers who are very disappointed when I have to confirm that any 2024 outings will be limited to one striped bass per person.
- (e) A number of cancellations have already occurred for the 2024 season. My estimate is that business revenues will decline 50% or more if these rules are not changed back to the 2023 limits.
- (f) I made numerous calls to the Maryland Dept. of Natural Resources and was told that compliance was compulsory in all circumstances -- no exceptions.
- (g) In addition to my business income losses, charter boat captains like myself have invested tens of thousands of dollars in vessels, equipment, maintenance facilities, promotional material, etc. which will be severely diminished in value.
- (h) My employees, some of who go back more than 18 years with my company, will have to be laid off.

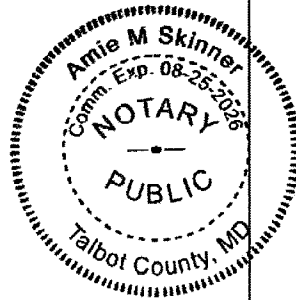
I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Executed on February 16 2024

Brian L. Hardman

Brian L. Hardman

Amie M. Skinner
COMM. EXP. 08/25/2026



**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

DELMARVA FISHERIES ASSOCIATION INC., and
MARYLAND CHARTER BOAT ASSOCIATION,
INC.

Plaintiffs,

v.

ATLANTIC STATES MARINE FISHERIES
COMMISSION

Defendants.

Case No: _____

DECLARATION OF ROBERT BRAMBLE

In accordance with 28 U.S.C. § 1746, Robert Bramble offers the following declaration:

1. I am the Owner/Operator of Bucktales Charters.
2. Established in 2012, Bucktales Charters is located in Rock Hall, MD, a town which is in close proximity to the Chesapeake Bay or one of its major tributaries.
3. Bucktales Charters is a state-licensed, full-service "for hire" fishing vessel.
4. I am a member of one or both the Plaintiffs named in this case.
5. I have worked in this line of business for 12 years.
6. In addition to myself and other family members, this business employs four full-time and part-time employees and sometime more depending the months with the highest level of tourism.
7. My testimony herein is based upon my personal knowledge and a review of records kept in the ordinary course of business.

EXHIBIT E

8. 100 % percent of my customers are drawn to the Chesapeake Bay due to the fishing opportunities for Striped Bass.

9. With respect to new striped bass limitations issued by the Atlantic States Marine Fisheries Commission (ASMFC) scheduled to take effect on May 1, 2024, I can state the following:

- (a) The charter business in our community has yet to fully recover from the COVID years.
- (b) I have been receiving a number of calls from my regular and other customers inquiring about the new limits on fishing for Striped Bass.
- (c) There have already been some cancellations as a consequence of new rules being established for the upcoming fishing 2024 season.
- (d) My estimate is that business revenues could decline 45-50% if these rules are not changed back to the 2023 limits.
- (e) In addition to the income loses, property values, business equipment, inventory value, etc. will be diminished by declines in the charter business and general tourism.
- (f) My employees, some of who go back more than seven years with my company, will almost certainly have to be laid off.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 22, 2024.



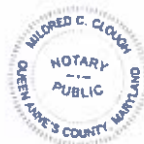
Robert Bramble, Jr.

State of Maryland
County of Kent, to wit:

Sworn to and subscribed before me by Robert Bramble, Jr. this 22nd day of February, 2024.


Mildred C. Clough
Notary Public

Notary Seal:



My Commission Expires: 01/21/2025

To whom it may concern,

The recent emergency restrictions on Rock Fish season and limits implemented by Maryland Department of Natural Resources will have a significant impact on the Town of Rock Hall. Furthermore, the Department is considering making these restrictions permanent. These restrictions, especially as they impact our local charter boats, will damage the economy in our Town. Every booked charter brings demand for restaurants, motel and short-term rentals, local goods and services, and creates repeat customers and visitors that support our local tourism industry. The limitations on these trips will reduce the number of those who set their destination to Rock Hall and will in turn reduce the dollars coming into our community and supporting our local businesses. The restrictions, while they may be well-intentioned, will create a negative impact that will ripple through the local economy.

Signed,

James Cook

Mayor of Rock Hall

A handwritten signature in black ink, appearing to read 'James Cook', with a long horizontal line extending to the right.

EXHIBIT F