

Fishing—Conservation—The New Jersey Striped Bass Act—N.J. Stat. Ann. §§ 23:5-43 to 23:5-48 (West Supp. 1984).

The striped bass, once abundant on the East Coast, is in peril of becoming endangered.¹ New Jersey's most recent attempt to regulate the taking of striped bass is the enactment of the "Striped Bass Act" on January 17, 1984.² While there are various threats to the existence of the striped bass, the new statute focuses on only one of these factors: fishermen. The effect of pollution in the coastal waters is another threat to the existence of not only the stripers, but all marine life.³ Additionally, real estate developers continue to fill in areas where the fish breed, thereby threatening to eliminate the few spawning grounds that remain.⁴ The lack of cooperation among the coastal states, where the striped bass are found, thwarts the creation of effective legislation and indicates that federal action may be necessary.⁵ For these reasons, New Jersey's "Striped Bass Act" is insufficient to accomplish its purpose.

New Jersey has exhibited an interest in preserving the striped bass population for many years. Since 1938, the Legislature has enacted laws which regulate the time, manner, and size of striped bass being caught.⁶ Notably, these early measures were taken while the fish were still in abundance. Despite these early attempts at preservation, one very significant obstacle to the protection of the striper is its migratory nature.⁷ The subsequent inability of coastal states to work together to enact effective interstate regulations leaves the bass unprotected.

The "Striped Bass Act" was sponsored by Senator Thomas

¹ 130 CONG. REC. E501 (daily ed. Feb. 21, 1984) (statement of Rep. Schneider).

² N.J. STAT. ANN. § 23:5-43 to 23:5-48 (West Supp. 1984), the Striped Bass Act [hereinafter the Act].

³ 130 CONG. REC. S.5646 (daily ed. May 11, 1984) (statement of Sen. Chafee).

⁴ Lenehan, *The Striper's Sad Decline Raises Furor*, *The Star-Ledger*, June 17, 1984, at 1, col. 1.

⁵ Chafee, *supra* note 3.

⁶ L. 1938, c. 318, § 1, amended by L. 1946, c. 47, § 1; L. 1947, c. 68, § 1; L. 1948, c. 35, § 2; L. 1953, c. 333, § 1 (codified as amended at N.J. STAT. ANN. § 23:5-45 (West Supp. 1984)). L. 1938, c. 318, § 4; amended by L. 1976, c. 109, § 1 (codified as amended at N.J. STAT. ANN. § 23:5-46 (West Supp. 1984)). L. 1952, c. 216, § 1; L. 1938, c. 318, § 3, amended by L. 1948, c. 35, § 4; L. 1953, c. 333, § 3 (codified as amended at N.J. STAT. ANN. § 23:5-47 (West Supp. 1984)).

⁷ Schneider, *supra* note 1.

Gagliano (R-Monmouth). It proscribes taking fish less than eighteen inches long, limits the daily catch to four fish between eighteen and twenty-four inches, and to ten fish over twenty-four inches in length.⁸ Fishing for striped bass is prohibited between January 1 and February 28 of each year.⁹ The methods by which striped bass may be taken are limited to hook and line, or "goggle fishing".¹⁰ Goggle fishing, as defined in the Act, involves the use of a spear, harpoon, or other hand held and hand propelled missile while completely submerged in the water.¹¹ The use of nets is forbidden, except to land a fish otherwise legally captured.¹²

The Act's restrictions affect commercial fishermen far more than "sport" fishermen.¹³ Forbidding the use of nets while restricting the numbers caught favors the sportsman who uses a hook and line, or goes "goggle fishing".¹⁴ This apparent inequity is the source of great controversy between the fishermen.¹⁵ The regulations do not actually prevent the fish from being captured, except in certain waters within a defined period, but rather restrict the manner in which they may be caught.

In an attempt to provide more effective protection of the fisheries of the Atlantic seaboard, delegates representing twelve coastal states were organized to form the Atlantic States Marine Fisheries Commission [hereinafter ASMFC].¹⁶ The ASMFC issues management reports to states with recommendations.¹⁷ Unfortunately, it is powerless, for the most part, to enforce its recommendations.¹⁸ In 1981, the Commission issued a report pro-

⁸ The Act, *supra* note 2.

⁹ *Id.* During these months, generally the coldest part of the year, the fish are extremely lethargic. They congregate in schools, staying mostly in the tidal rivers, and leave themselves open to easy capture in great numbers.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Lenehan, *The Difficulties of Protecting Striped Bass*, *The Star-Ledger*, June 20, 1984, at 14, col. 3.

¹⁴ N.J. STAT. ANN. § 23:5-47; *see generally* Lenehan, *supra* note 13.

¹⁵ Lenehan, *supra* note 13, at 14, cols. 2-3.

¹⁶ N.J. STAT. ANN. § 32:21-1 *et seq.* (West 1941). Three Interstate Fisheries Commissions have been established for the Atlantic, the Gulf of Mexico, and the Pacific coasts. *See* S.2667, *supra* note 3.

¹⁷ N.J. STAT. ANN. § 32:21-1 (West 1941).

¹⁸ N.J. STAT. ANN. § 32:21-1 *et seq.* (West 1941).

posing "to perpetuate the striped bass resource in fishable abundance throughout its range and generate the greatest possible net economic and social benefits from its harvest and utilization over time."¹⁹ Various objectives for the achievement of the goal were proposed: maintenance of a spawning stock, adoption of standards of environmental quality, and promotion of research were among the suggestions.²⁰ The stringent regulations proposed by the Commission in this report have not been adopted by the New Jersey Act,²¹ nor by other states.²² For example, the ASMFC recommended management measures including size limitations which are different for coastal and inland waters. It suggested a minimum of fifteen inches total length in inland waters, where the stripers reproduce, and twenty-four inches total length in coastal waters, as well as limits on daily catches and methods used to capture the bass.²³ Area closures were also recommended to protect the spawning stocks. Additionally, monitoring of these programs was suggested.²⁴

While New Jersey has only complied with the suggestion to limit catch and size allowable,²⁵ other states have been equally, if not more uncooperative.²⁶ The ASMFC Interstate Striped Bass Management Plan Implementation Update has listed the striped bass laws and regulations from Maine to North Carolina.²⁷ According to this report none of the coastal states listed included provisions to create area closures, nor did they provide for the collection of data and monitoring of the success of the management efforts.²⁸

Maryland has proposed regulations for a moratorium on all

¹⁹ *Fisheries Management Report No. 1 of the Atlantic States Marine Fisheries Commission: Interstate Fisheries Management Plan for the Striped Bass*, at 6-16, October, 1981 [hereinafter *Fisheries Management Report*].

²⁰ *Id.* at 6-17.

²¹ Speir, *Atlantic States Marine Fisheries Commission Interstate Striped Bass Management Plan Implementation Update: Striped Bass Laws and Regulations Maine to North Carolina*, January 11, 1984 [hereinafter *Implementation Update*].

²² *Id.*

²³ *Fisheries Management Report*, *supra* note 19, at 6-23.

²⁴ *Id.* at 6-23 to 6-24.

²⁵ *Implementation Update*, *supra* note 21.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

striped bass fishing.²⁹ The states which have been the least cooperative in terms of compliance with ASMFC regulations are Delaware and North Carolina. These states have not enacted the minimum size requirements,³⁰ and still allow fish to be caught at twelve inches.³¹ The Delaware Legislature has encountered difficulty in their goal to comprehensively revise their coastal fishing laws.³² Specific legislation aimed at protecting the striped bass was to be introduced in 1984.³³

The ASMFC has issued 1984 recommendations³⁴ which are being considered by the New Jersey Legislature. These proposals are extremely demanding in terms of enforcement. In New Jersey, the branch of government taking responsibility for such enforcement has varied over the years. New Jersey's Division of Fisheries Management is reorganizing an enforcement branch consisting of approximately eight members.³⁵

Despite the good intentions of the New Jersey Legislature, the Striped Bass Act alone will not be effective. For such legislation to be effective, other states must enact similar, if not identical, legislation.³⁶ In fact, there is some indication that federal legislation may be the only effective solution. Two proposals have been introduced in Congress by legislators from Rhode Island. Congresswoman Claudine Schneider has proposed a three

²⁹ Md. Admin. Reg., Vol. 11, Issue 22.

³⁰ *Implementation Update*, *supra* note 21.

³¹ *Id.*; DEL. CODE ANN., tit. VII, §§ 933, 1122 (West Supp. 1953).

³² *Implementation Update*, *supra* note 21.

³³ *Id.*; telephone interview with Delaware fisheries biologist Roy Miller. Delaware has proposed a moratorium, however, if reaction is negative, a twenty-four inch limit will be mandated.

³⁴ Chafee, *supra* note 3.

³⁵ Telephone interview with Bruce Freeman, fisheries biologist of the New Jersey State Division of Fish, Game & Wildlife, and delegate to the ASMFC. The Shellfish Warden System was responsible for the enforcement of regulations primarily relating to hard and soft clams. The Marine Police had the same responsibility added to boating safety regulations. When the enforcement branch fell under the State Police, it was entitled the Bureau of Marine Enforcement of the Division of Law & Public Safety. The chief responsibilities of this branch were boating safety and drug control. Currently, eight conservation officers from the Division of Fish, Game & Wildlife serve as the "unofficial" Marine Enforcement Unit. Their principle priorities are the enforcement of shellfish and finfish regulations. This group seeks only four or five more officers, because they feel that twelve or thirteen highly motivated people will be adequate to accomplish their goals. *See also* N.J. STAT. ANN. § 13:1B-38 (West 1948).

³⁶ Chafee, *supra* note 3.

year ban on all striper fishing.³⁷ Rhode Island was the first state to attempt a moratorium, which was lifted in July.³⁸ Although Maryland and Delaware are interested in their own moratoriums, these efforts may meet similar fates.

Rhode Island Senator John Chafee seeks an immediate temporary moratorium which would be lifted state by state as each state adopts a federally-approved fishery management plan.³⁹ The Chafee bill has been more favorably received by Congress.⁴⁰ The striped bass is not the only species protected by his proposal, which is entitled the "Coastal Migratory Fish Conservation Act".⁴¹ Under the Chafee proposal, if a state failed to enforce its regulations, or did so negligently or was incapable of implementing the proposed act's requirements, the federal government would be empowered to withdraw its approval and thereby restore the moratorium.⁴²

Although the striped bass is not the only species of fish in danger of extinction, its recent drastic decline has sparked considerable interest.⁴³ Several reports show that the commercial harvest in the East in the early nineteen-seventies was more than thirteen million pounds, whereas last year the total was less than two million pounds.⁴⁴ The Chesapeake Bay, formerly the breeding ground for ninety percent of all striped bass, has reached an all time low.⁴⁵ The last significant hatch of fish from that area was in 1982.⁴⁶ Those young fish are reaching a size where they can be legally caught under most state regulations.⁴⁷ In addition, the larger fish, which are not regulated under most statutes, are typically female, carrying up to a quarter of their body weight in

³⁷ Chafee, *supra* note 1.

³⁸ Speir, *Atlantic States Marine Fisheries Commission Interstate Striped Bass Management Plan Implementation Update: Striped Bass Laws and Regulations Maine to North Carolina*, September 24, 1984.

³⁹ Chafee, *supra* note 3.

⁴⁰ Lenehan, *supra* note 13, at 15, col. 3.

⁴¹ Chafee, *supra* note 3.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Lenehan, *supra* note 4, at 16, col. 3; Roberts, *Bass: Why Is the Hudson So Important?*, N.Y. Times, June 26, 1984, at C4, col. 2.

⁴⁵ Schneider, *supra* note 1.

⁴⁶ Lenehan, *Striped Bass Lose Spawning Haven*, The Star-Ledger, June 18, 1984, at 4, col. 3; Lenehan, *supra* note 13, at 15, col. 1.

⁴⁷ Lenehan, *supra* note 13, at 15, col. 1.

the form of eggs.⁴⁸ Each female carries up to four million potential larvae.⁴⁹ The larger female fish tend to migrate farther,⁵⁰ and this leads to a greater threat to the unborn bass, who are quickly wiped out with the taking of each female breeder. This problem is not addressed by the New Jersey statute. It is also unacknowledged by neighboring states' regulations.

As stated before, there are a number of problems which the bill fails to address. Pollution is poisoning the coastal waters and seriously impedes the natural development of the fish. Another major barrier to the striped bass' survival is real estate development. Many development projects pose serious threats to the spawning grounds of the bass, who, like other anadromous species, return to the fresh water where they were born, to reproduce.⁵¹

A temporary federal moratorium on striper fishing is needed. Coastal states must work together to save the striped bass from extinction. Efforts to curtail the adverse effects of pollution and the threats posed by continued development of areas where stripers breed may also be necessary if the striped bass is to have a chance to regenerate.

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⁴⁸ Lenehan, *supra* note 4, at 17, col. 1.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ 16 U.S.C. § 1802(l) (West Supp. 1983).