



## **OPENING BLOCK ISLAND SOUND TRANSIT ZONE TO STRIPED BASS RECREATIONAL FISHING**

**Casey Shickling**



*Marine Affairs Institute*



THE  
UNIVERSITY  
OF RHODE ISLAND

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Atlantic striped bass (“striped bass”) have been an important resource to commercial and recreational fisheries for centuries.<sup>1</sup> Striped bass “represent[t] one of the most important natural resources . . . one that fueled the development and economic growth of the country,” starting as early as the first settlers arrived in Massachusetts.<sup>2</sup> As legend has it, striped bass were eaten at the first Thanksgiving, nourished Pilgrims during their first winters in the colony, and produced enough income to build our nation’s first public school.<sup>3</sup> The striped bass has been the highlight of the recreational “Striped Bass Derby” started in 1954 on Long Beach Island, which historical has provided a substantial economic boost to the area.<sup>4</sup> Today, their importance is celebrated as being named the state fish in Rhode Island, Maryland, and North Carolina.<sup>5</sup>

However, in the 1980s, overfishing and environmental conditions caused the striped bass fisheries to collapse.<sup>6</sup> Since then, legislation has been enacted to help the species regrow.<sup>7</sup> Additionally, in 2007, the Bush Administration issued an executive

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<sup>1</sup> *Atlantic Striped Bass*, NOAA Fish Watch, [http://www.fishwatch.gov/seafood\\_profiles/species/bass/species\\_pages/atlantic\\_striped\\_bass.htm](http://www.fishwatch.gov/seafood_profiles/species/bass/species_pages/atlantic_striped_bass.htm) (last visited Nov. 15, 2012).

<sup>2</sup> *Hearing on H.R. 3906, H.R. 6007 and H.R. 6096 Before the Subcomm. On Fisheries, Wildlife, Oceans and Insular Affairs, & the Comm. on Natural Res.*, 112th Cong. (2012) [hereinafter *Hutchinson*] (statement of Jim Hutchinson, Managing Director, Recreational Fishing Alliance & President, NY Sportfishing Federation).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See State Symbols USA, <http://www.statesymbolsusa.org/> (last visited Nov. 15, 2012).

<sup>6</sup> See *Atlantic Striped Bass*, *supra* note 1.

<sup>7</sup> See Atlantic Striped Bass Conservation Act, 16 U.S.C. §§ 5151-5158 (1984); Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C §§ 1801-1884 (1976).

order that encouraged states to enact measures that will help conserve striped bass.<sup>8</sup> The population stock assessment was last updated in 2011, when it indicated that striped bass are not being overfished, and that they are producing sustainable harvest rates.<sup>9</sup> While the stock has declined since 2004, it is believed that this decline is due to the stock in Maine.<sup>10</sup> Alternatively, other data provides that there has been a decrease of total species abundance since 2006 and declines in recreational catch rates since this date.<sup>11</sup> Hence, the current population levels of striped bass are unclear, and the field appears to lack reliable data regarding the sustainability of the species population.

### Background on H.R. 3906

In 2006, the National Marine Fisheries Service re-evaluated the federal ban on harvest and possession of striped bass in federal water.<sup>12</sup> However, after receiving approximately 8,500 comments, almost all that favored maintaining the closure, the agency decided to maintain the closure to ensure fishing pressure did not increase and to preserve the conservation of the striped bass.<sup>13</sup> H.R. 3906 was originally introduced

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<sup>8</sup> Exec. Order No. 13449, 72 Fed. Reg. 205 (Oct. 24, 2007), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2007-10-24/pdf/07-5299.pdf> [hereinafter *Exec. Order*].

<sup>9</sup> *See Atlantic Striped Bass*, *supra* note 1.

<sup>10</sup> *Id.*

<sup>11</sup> *Hearing on H.R. 3906, H.R. 6007 and H.R. 6096 Before the Subcomm. On Fisheries, Wildlife, Oceans and Insular Affairs, & the Comm. on Natural Res.*, 112th Cong. (2012) [hereinafter *Beal*] (statement of Robert Beal, Acting Executive Director, Atlantic States Marine Fisheries Commission).

<sup>12</sup> *Legislative Hearing on Bills Addressing Anadromous Fish, Striped Bass, Interjurisdictional Fisheries, the Northwest Atlantic Fisheries Organization, and Recreational Fishing in Block Island Sound: Hearing on H.R. 3906, H.R. 6007 and H.R. 6096 Before the Subcomm. On Fisheries, Wildlife, Oceans and Insular Affairs, & the Comm. on Natural Res.*, 112th Cong. (2012) [hereinafter *Rauch*] (statement of Samuel D. Rauch III, Deputy Assistant Administrator, Regulatory Programs for the National Marine Fisheries Service).

<sup>13</sup> *Id.*

to Congress on August 10, 2010 as H.R. 6092.<sup>14</sup> However, this bill was referred to the House Committee on Natural Resources, and was not enacted.<sup>15</sup>

On February 6, 2012, H.R. 6092 was reintroduced to Congress as H.R. 3906.<sup>16</sup> The bill provides that recreational fishermen will be able to fish in the Block Island Sound transit zone (“transit zone”) for striped bass.<sup>17</sup> Additionally, the bill allows an exception for the Secretary of Commerce, allowing the Secretary to place “seasonal or other temporary limitations on fishing that are specifically necessary for the conservation and management” of striped bass.<sup>18</sup>

The transit zone is the area of federal waters within Block Island Sound, located between swaths of state waters.<sup>19</sup> The area covers approximately 155 square miles of federal waters, traditionally managed by the federal government.<sup>20</sup> Seaward boundaries tend to have very strict rules, derived from years of controversy, not only between federal and state powers, but due to international dispute as well. Thus, a state’s seaward boundary is measured by its coastline.<sup>21</sup> A state’s boundary may extend three geographical miles from established coastlines, and may extend beyond this limit only if this exception was established by its constitution at the time the state became a

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<sup>14</sup> Govtrack, <http://www.govtrack.us/congress/bills/111/hr6092> (last visited Nov. 15, 2012).

<sup>15</sup> *Id.*

<sup>16</sup> H.R. 3906, 112th Cong. (2nd Sess. 2012).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Specifically, this area encompasses “north of a line connecting Montauk Light, Montauk Point, New York, and Block Island Southeast Light, Block Island, Rhode Island; and west of a line connecting Point Judith Light, Point Judith, Rhode Island, and Block Island Southeast Light, Block Island, Rhode Island.”

*Id.*

<sup>20</sup> Hutchinson, *supra* note 2. For some reference to scale, Block Island is about 10 square miles. *Block Island*, Encyclopedia Britannica, <http://www.britannica.com/EBchecked/topic/69564/Block-Island> (last visited Nov. 15, 2012). Rhode Island encompasses 1,221 square miles, and therefore this area would fit into Rhode Island about 7.8 times. *Rhode Island*, Encyclopedia Britannica, <http://www.britannica.com/EBchecked/topic/501534/Rhode-Island> (last visited Nov. 15, 2012).

<sup>21</sup> 43 U.S.C. § 1312 (1953).

member of the Union, or if it has subsequently been approved by Congress.<sup>22</sup> This is important because once a state has established these inland waters, its “sovereignty of a coastal State extends to the air space over the territorial sea as well as to its bed and subsoil.”<sup>23</sup> Thus, a state has complete jurisdiction over this area, and may govern it any way they wish, including establishing fishing regulations.<sup>24</sup>

Because Rhode Island’s Block Island is located twelve miles from coastal Rhode Island, and fourteen miles from Montauk Point, the state’s jurisdictional seaward boundaries is more complicated.<sup>25</sup> Although New York and Rhode Island have established jurisdiction three miles seaward, and while Block Island has established its own inland waters that extend three miles from its coastline, because Block Island is so far away from Rhode Island and Montauk Point, a swath of federal water lies between the states internal waters.<sup>26</sup>

On July 12, 2012, there was a hearing on H.R. 3906. Captain Paul G. Forsberg testified that the bill would allow his company, one of the largest year round employers in Montauk, to carry more passengers and sail on more trips.<sup>27</sup> He claimed that this increased business would benefit Long Island’s economy, and would extend beyond fishing to tackle shops, marinas, hotels, stores, and restaurants.<sup>28</sup> He believes that because the fish stocks are healthy and very well managed by the state, opening this

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<sup>22</sup> *Id.*

<sup>23</sup> Convention on the Territorial Sea and the Contiguous Zone art. 2, Apr. 29, 1958, available at [http://untreaty.un.org/ilc/texts/instruments/english/conventions/8\\_1\\_1958\\_territorial\\_sea.pdf](http://untreaty.un.org/ilc/texts/instruments/english/conventions/8_1_1958_territorial_sea.pdf) [hereinafter *Convention*].

<sup>24</sup> *Id.*

<sup>25</sup> See Block Island Tourism Council, <http://www.blockislandinfo.com/viewpage.aspx?SectionID=7> (last visited Nov. 15, 2012); RI Economic Development Corporation, <http://www.riedc.com/data-and-publications/state-and-community-profiles/new-shoreham> (last visited Nov. 15, 2012).

<sup>26</sup> See *Convention*, *supra* note 23, at art. 10.

<sup>27</sup> *Hearing on H.R. 3906, H.R. 6007 and H.R. 6096 Before the Subcomm. On Fisheries, Wildlife, Oceans and Insular Affairs, & the Comm. on Natural Res.*, 112th Cong. (2012) [hereinafter *Forsberg*] (statement of Captain Paul Forsberg, President, Viking Fishing Fleet).

<sup>28</sup> *Id.*

area will not put any stress or danger of overfishing.<sup>29</sup> Additionally, the transit zone is difficult for law enforcement officers to police because people may be fishing in the transit zone for a different species, but may striped bass on board from a different area.<sup>30</sup> Because these fishermen cannot prove that they did not catch the striped bass in federal waters, they are fined.<sup>31</sup> He also claims that this area can be confusing to navigate, so many fishermen are being fined based on an “innocent mistake.”<sup>32</sup> Forsberg is concerned that when these private fishermen leave, the revenue they bring will also disappears.<sup>33</sup>

Alternatively, Jim Hutchinson was concerned there is not sufficient analysis of biological, conservation or economic impacts that could occur if this area were open to striped bass fishing.<sup>34</sup> Additionally, as the prohibition of striped bass fishing is uniform throughout the federal waters on the Atlantic coast, this bill would create only a small exception, for only a small amount of fishermen.<sup>35</sup> Also, because the bill does not limit fishing of specific kinds equipment, it could lead to concerns if the area was also opened to commercial fishermen.<sup>36</sup> While the possession requirements have already been modified for the transit zone, and the Commission has already looked into opening up the transit area to recreational fishing in the previous bill, it was not enacted.<sup>37</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Hutchinson, *supra* note 2.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> Rauch, *supra* note 12.

Despite the bill's exception that allows temporary limitations on fishing in the area, this would limit the federal power to control this area.<sup>38</sup>

### Possession Differences in Federal and State Water in Rhode Island

In Rhode Island state waters, commercial fishermen may take or possess striped bass that are greater or equal to thirty-four inches in total length.<sup>39</sup> In addition to catch restrictions established by the Department of Environmental Management, these fishermen are also subject to yearly quota limitations that are set by Atlantic State Marine Fisheries Commission, an organization dedicated to the conservation and management of fisheries resources, and this is also regulated by the Division of Fish and Wildlife.<sup>40</sup> There are two open seasons for striped bass commercial fisheries.<sup>41</sup> From June 6 to August 31, seventy-five percent of the commercial quota is available, and twenty-five percent of the commercial quota is available from September 11 to December 31.<sup>42</sup> If the quota is anticipated to be harvested earlier than the closing date, the season will close sooner.<sup>43</sup> During both season the possession limit is “five (5) fish per person per calendar day, or if fishing from a vessel five (5) fish per vessel per calendar day” and the fishery is closed on Fridays and Saturdays of each season, meaning that no commercial possession or sale is allowed on these days.<sup>44</sup>

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<sup>38</sup> *See id.*

<sup>39</sup> R.I. Admin. Code 25-8-4:12.3.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> This restriction on Fridays and Saturdays applies to non-floating trap net commercial fishermen. *Id.*

The requirements for recreational fishing differ in many ways from the commercial fishing limits in Rhode Island. Recreational fishermen may not possess striped bass that are less than twenty-eight inches in total length.<sup>45</sup> However, there is no closed season for recreational striped bass fishing.<sup>46</sup> Fishermen are allowed to possess a maximum of two striped bass per calendar day, and this maximum is calculated by dividing the number of fish by the number of fishermen on a particular vessel.<sup>47</sup>

Alternatively, it is unlawful to fish, harvest, possess or retain any striped bass within federal waters.<sup>48</sup> However, there is an exception for the federal waters within the transit zone.<sup>49</sup> This exception provides permission only for the possession of striped bass.<sup>50</sup>

Currently the distinction of fishing limitations between the transit zone and state waters is fairly clear, fisherman may take and possess striped bass in Rhode Island water, but may only possess them in the transit zone. If H.R. 3906 is passed, recreational fishing for striped bass will be allowed in the transit zone.<sup>51</sup> If this area is open, Rhode Island's recreational limitations would likely govern the transit zone, at least for those with Rhode Island permits. As Forsberg suggested at the hearing, because fishermen would have a larger fishing jurisdiction with uniform borders, this could result in more licenses being issued within the state, or at least cause less

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<sup>45</sup> R.I. Admin. Code 25-8-4:12.1.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> 50 C.F.R. § 697.7 (b).

<sup>49</sup> 50 C.F.R. § 697.7 (b)(C).

<sup>50</sup> *Id.*

<sup>51</sup> H.R. 3906.



fishermen to leave after getting frustrated with the different federal and state policies.<sup>52</sup>

The number of recreational fishing licenses has already increased from 2010 when 15,697 licenses were issued to 2011 when 38,224 licenses were issued.<sup>53</sup> If more fishermen would be interested in fishing striped bass if this bill was passed, this could lead to more revenue for Rhode Island.

Alternatively, opening the transit zone could lead to the biological and conservation concerns that Jim Hutchinson was concerned about.<sup>54</sup> Opening this area would likely increase the amount of striped bass available to recreational fishermen. Additionally, if more recreational licenses are issued so that fisherman can fish striped bass, there might be a significant more amount of striped bass being caught. Even if there were not more permits issued, but it was just easier for fishermen to reach their two fish daily quota, or they fished more days because it was easier, this could result in an exploitation of the species. Because there is no closed season for recreational fishing in Rhode Island, there is no way to completely regulate this.<sup>55</sup>

If the bill were considering opening this area to commercial fisherman, like what Hutchinson implies could happen in the future, there could be additional possession concerns.<sup>56</sup> The Atlantic State Marine Fisheries Commission would need to determine if the commercial quota would be increased based on this, if they would allow more fish to be taken during the year, or keep the quota the same, which would allow the fishermen

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<sup>52</sup> See Forsberg, *supra* note 27.

<sup>53</sup> These numbers are listed for all recreational fishing licenses, not just licenses for those who fish for striped bass, the number of licenses obtained may not have increased for striped bass during this period, however this point is made to show that these numbers could increase because of striped bass if this bill is passed. R.I. Saltwater Recreational Fishing License Program Annual Report 9-10, RI Dept. of Env't Mgmt. Div. of Fish and Wildlife (2012).

<sup>54</sup> See Hutchinson, *supra* note 2.

<sup>55</sup> See R.I. Admin. Code 25-8-4:12.1.

<sup>56</sup> See Hutchinson, *supra* note 2.

to just have fewer restrictions on where they can fish.<sup>57</sup> Additionally, seasons may have to close sooner if it were easier for fishermen to reach their five fish daily limit, or if they fished more days because it was easier to do so.<sup>58</sup>

However, because the bill opens only recreational fishing to the transit zone, this specific issue will not arise if this bill is passed. However, this may raise a concern because there is no yearly quota for recreational striped bass.<sup>59</sup> Because Rhode Island's regulations are lacking in these measures, this may be the very concern that causes the federal government to ignore this bill. Despite the exception allowing the federal government to step in during limited times, as Hutchinson describes, they are still losing some control over the conservation measures.<sup>60</sup> As shown through the history of the striped bass, and through the purposes of the Atlantic Striped Bass Conservation Act, Atlantic States Marine Fisheries Commission, the Magnuson-Stevens Act, and the Executive Order, the federal government's main concern is conservation.<sup>61</sup> Thus, regardless of the current population status of the striped bass, this bill offers very little conservation.<sup>62</sup> It is likely that there will be economic benefits and navigational clarity from opening these waters, but it is also important to ensure that these benefits can be sustained overtime.<sup>63</sup> Thus, perhaps if Rhode Island created a yearly quota for recreational fishing, as it has in commercial fishing, this could ensure that the striped

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<sup>57</sup> See R.I. Admin. Code 25-8-4:12.3.

<sup>58</sup> See *id.*

<sup>59</sup> R.I. Admin. Code 25-8-4:12.1.

<sup>60</sup> See Hutchinson, *supra* note 2.

<sup>61</sup> See *Exec. Order*, *supra* note 8.

<sup>62</sup> See H.R. 3906.

<sup>63</sup> See Forsberg, *supra* note 27.

bass would be protected, while still allowing fishermen more jurisdictional opportunities to fish for the species.<sup>64</sup>

### Alternatives - Magnuson – Stevens Act Introduction

The Magnuson – Stevens Act was enacted to provide for the conservation and management of fisheries resources in the United States. Before this Act was enacted, even though fish production had multiplied substantially, other nations were increasing the amount of fish that were being harvested off U.S. coastline, which led to the overfishing of at least 10 commercial stocks, causing serious economic losses for the U.S. fishing industry.<sup>65</sup> One of the reasons that this Act is so significant is because it gives coastal states jurisdiction over fisheries within both the States' internal waters and out to the three mile limit from its baseline.<sup>66</sup>

### The Massachusetts Exception

In 1983, Congress added section 306(a) to the Magnuson – Stevens Act, which expanded the jurisdiction of coastal states.<sup>67</sup> This section adds the following language to the Act:

For the purposes of this chapter, except as provided in subsection (b) of this section, the jurisdiction and authority of a State shall extend – (A) to any pocket of waters that is adjacent to the State and totally enclosed by lines delimiting the territorial sea of the United States pursuant to the Geneva Convention on the Territorial Sea and Contiguous Zone or any successor convention to which the United States is a party; (B) with respect to the body of water commonly known as Nantucket Sound, the pocket of water west of the seventieth meridian west of Greenwich.<sup>68</sup>

Massachusetts Democratic Congressman, Gerry Studds, explained that this language “addresses those limited situations where Federal waters are surrounded by State

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<sup>64</sup> See R.I. Admin. Code 25-8-4:12.3.

<sup>65</sup> *Davrod Corp. v. Coates*, 971 F.2d 778, 785 (1st Cir. 1992).

<sup>66</sup> *Id.* at 786.

<sup>67</sup> *Id.*

<sup>68</sup> 16 U.S.C. § 1856(a)(2).

waters. The presence of these pockets creates incongruous fishery management schemes and presents significant problems in the area of fisheries law enforcement.”<sup>69</sup> Although the federal water is not completely enclosed by the Massachusetts territorial sea, Nantucket Sound has the same management problems as if it were completely surrounded.<sup>70</sup> The Congressman believed that the exception for Nantucket Sound, “[b]y insuring a unified fisheries management regime, this amendment will enhance fishery conservation and fisheries law enforcement in the sound.”<sup>71</sup> However, as written, this amendment may give Massachusetts more than just fishing rights within Nantucket Sound. By stating that “the jurisdiction and authority of a State shall extend,” this exception could allow Massachusetts to treat this area as its own internal waters, and could therefore create other rules and regulations under this amendment that are unrelated to fishing.<sup>72</sup> In 2004, a court held that Massachusetts did not have the authority to approve the construction of a commercial windmill farm on Nantucket Sound.<sup>73</sup> The court found that the Magnuson exception could not have been meant to extend beyond fishing related conduct because this could allow state governments to control national sea beds.<sup>74</sup> Instead, the court noted that Congress may not have intended the jurisdiction and authority of the state to apply outside of the Act, and instead wanted the language to apply only throughout the Act itself.<sup>75</sup>

While this exception may now be viewed as a victory for Massachusetts, the decision to add this amendment did not arise without much effort to extend this

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<sup>69</sup> *Davrod Corp.*, 971 F.2d at 786 (quoting Congressman Studds of M.A.).

<sup>70</sup> *Davrod Corp.*, 971 F.2d at 786 (citing Congressman Studds of M.A.).

<sup>71</sup> *Davrod Corp.*, 971 F.2d at 786 (quoting Congressman Studds of M.A.).

<sup>72</sup> See 16 U.S.C. § 1856(a)(2).

<sup>73</sup> *Ten Taxpayer Citizens Grp. v. Cape Wind Ass’n*, 373 F.3d 183, 186, 197 (1st Cir. 2004).

<sup>74</sup> *Id.* at 197.

<sup>75</sup> See *id.* at 194 n. 11.

boundary previously. In 1986, the Supreme Court held that Nantucket Sound was not part of Massachusetts inland waters under the doctrine of ancient title because Massachusetts did not occupy Nantucket Sound in a way that they could claim its long usage.<sup>76</sup>

Rhode Island does not fit within the first exception of the Magnuson-Steven Act because the federal waters are not totally enclosed by state waters.<sup>77</sup> Therefore, to allow Rhode Island the same authority as Massachusetts, this would require creating a fourth exception.<sup>78</sup> This exception would afford Rhode Island complete jurisdiction of this area, allowing the state to treat the waters as inland waters. H.R. 3906 is much more limited than this exception would be.<sup>79</sup> Not only is this bill asking only for jurisdiction over fishing rights, it is additionally limited to recreational fishing rights.<sup>80</sup>

#### The Alaska Exception

Alaska has tried to claim an exception to this rule regarding the Alexander Archipelagos.<sup>81</sup> The points they dispute all have pockets or enclaves that fall beyond the three miles from Alaska's coastline.<sup>82</sup> Alaska could not assert that this area has been historically treated as inland waters, and other nations have not recognized it as such and therefore Alaska was not able to claim this area as a historic bay.<sup>83</sup> Alaska also tried to assert that this area could be considered inland waters because the waters

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<sup>76</sup> U.S. v. Maine, 475 U.S. 89, 97 (1986).

<sup>77</sup> See 16 U.S.C. § 1856(a)(2)(A).

<sup>78</sup> See 16 U.S.C. § 1856(a)(2)(B).

<sup>79</sup> See H.R. 3906.

<sup>80</sup> See *id.*

<sup>81</sup> *Alaska v. U.S.* 545 U.S. 75, 80 (2005).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 83, 92.

of this archipelagos are two jurisdictional bays.<sup>84</sup> However, because the islands did not have well-marked indentations, they could not be considered mouths of a bay.<sup>85</sup>

However, like in Massachusetts, Alaska has also been granted an exception under the Magnuson-Stevens Act.<sup>86</sup> However, this exception is specifically limited to fishing, which makes H.R. 3906 more analogous to this exception because of this restriction.<sup>87</sup> Additionally, it is even more limited because the bill is restricted to recreational fishing.<sup>88</sup> Alternatively, Alaska is geographically distinct from both Rhode Island and Massachusetts, not only because of its location, but also because of its archipelagos status.

Both the Massachusetts and Alaska exceptions are subject to a condition, that a substantial portion of fishing may not take place in EEZ.<sup>89</sup> Therefore, it would need to be determined, not only on how this would affect the taking of striped bass, but also how much of the fishing would take place in this area, and how to prevent a “substantial portion” of fishing from taking place within this area.<sup>90</sup>

#### Rhode Island trying to Assert Jurisdiction of these Waters Before the Bishop Bill

David Sterling was apprehended twice in Rhode Island waters because he had possessed more yellowtail flounder than could legally be possessed within the State’s water.<sup>91</sup> On both occasions Sterling had caught the yellowtail flounder outside of the State’s territorial waters.<sup>92</sup> Despite the fact that Rhode Island had an interest in

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<sup>84</sup> *Id.* at 93.

<sup>85</sup> *Id.* at 94, 95.

<sup>86</sup> 16 U.S.C. § 1856(a)(1)(C).

<sup>87</sup> *See* H.R. 3906; 16 U.S.C. § 1856(a)(2)(B).

<sup>88</sup> *See* H.R. 3906.

<sup>89</sup> 16 U.S.C. § 1856(b).

<sup>90</sup> *See id.*

<sup>91</sup> *State v. Sterling*, 448 A.2d 785, 786 (R.I. 1982).

<sup>92</sup> *Id.*

preventing the depletion of this species, because Rhode Island laws conflict with the federal regulations for this species and because these fish were caught within federal waters, federal law controls.<sup>93</sup> Thus, a state may regulate fishing of a species beyond its state's boundaries only when there are no federal regulations that species.<sup>94</sup>

In 1985, the Supreme Court held that Block Island Sound was part of a jurisdictional bay, but that this bay specifically did not extend to Block Island.<sup>95</sup> Rhode Island and New York, among others, asked the Special Master for an exception to the ruling that the jurisdictional bay closes at the line drawn from Montauk Point to Watch Hill Point, and instead argues that a point on Block Island should replace the Watch Hill point as the opening of the bay.<sup>96</sup> They argued that Block Island influences the Sound in a number of ways, including shelter during rough weather, the fact that the salinity of the water around Block Island is less than the salinity of ocean water, vessels routinely used portions around Block Island for passage, and therefore keeping the points between "Montauk Point and Watch Hill Point in reality would not divide waters having the characteristics of a bay from those having the characteristics of the open sea."<sup>97</sup> However, this argument was rejected, finding that Block Island is "too far removed from what would otherwise be the closing line of the bay to affect that line."<sup>98</sup>

### Conclusion

Ultimately, it appears that the federal government is most concerned about the sustainability of the historic and symbolic Atlantic striped bass. However, the scientific data is unclear regarding the current population stock of the striped bass. Additionally,

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<sup>93</sup> *Id.* at 787.

<sup>94</sup> *Id.*

<sup>95</sup> *U.S. v. Maine*, 469 U.S. 504, 526 (1985).

<sup>96</sup> *Id.* at 509-11.

<sup>97</sup> *Id.* at 511.

<sup>98</sup> *Id.* at 524.

while there had been other legal alternatives for Rhode Island to gain jurisdiction over the transit area, by defining this area as a bay, Rhode Island may have exhausted these alternative options. However, Congress has codified exceptions for other states, namely Massachusetts and Alaska. Thus, while another exception is possible through the Bishop Bill, Rhode Island should show the federal government that there are the legal requirements in place for the State to successfully manage recreational striped bass fishing in this area in a way that will not further exploit striped bass.