

Evaluation of Expert Report by D.H. Bennett, "Effect of Sport-
Fishing Regulations on Striped Bass Population and Predation
in the Delta"

by

Louis W. Botsford

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I am Louis W. Botsford, a professor in the Department of Wildlife, Fish and Conservation Biology at the University of California, Davis. My curriculum vitae is attached as Exhibit A. I am an expert in the area of fish population dynamics and population estimation. I have provided advice on fish population dynamics and fisheries to governments at the state, federal and international levels. For example, I am currently on the Scientific and Statistical Committee of the Pacific Fishery Management Council, one of the regional federal fishery management bodies. I served on the Science Advisory Team for the implementation of the Marine Life Protection Act, a California law mandating implementation of Marine Protected Areas along the California coast. I also recently served in an Expert Workshop on Marine Protected Areas and Fisheries Management for the Food and Agriculture Organization of the United Nations (see publication 129 on CV). I served on a committee concerned with the decline of striped bass for the California Water Resources Control Board in the early 1980s, and I had a contract with California Department of Fish and Game for modeling striped bass shortly thereafter.

I have been asked to evaluate an expert report entitled, "The effect of sport-fishing regulations on the striped bass population in the Sacramento-San Joaquin Delta" by Dr. David H. Bennett (referred to hereinafter as the Bennett report). In particular I will address the claims that: (1) the analysis by D.H. Bennett is based on "accepted fisheries population models" (Bennett report, p. 8), (2) "By eliminating both the 18-inch minimum size and 2-fish bag limit regulations, the population of striped bass would decrease by approximately 60-70%" (Bennett report, p. 8), and (3) "All of these sources lead to the conclusion that eliminating the sport-fishing

regulations (minimum size limits, creel limits) will probably reduce the Delta striped bass population by approximately 60-70%" (Bennett report, p. 26).

I. My General Conclusions

- A. The report by D.H. Bennett does not follow the accepted method for estimating the decline in a population due to a change in regulations. Rather the report is a number of separate calculations, none of which produce a justifiable, reliable estimate.
- B. It is likely that eliminating regulations would reduce the striped bass population, but it is impossible to predict accurately the amount by which it will be reduced because of great uncertainty in: (1) the stock-recruitment relationship for this local population of striped bass, especially at low abundance and (2) the response of fishing effort (anglers) to the change in fishery regulations and to changes in abundance and size structure of the fishery.
- C. The report by D.H. Bennett ultimately determines final population equilibrium (a 60-70% decline) by claiming that "At about a 60-70% overall population decrease the resulting CPUE would be similar to the current CPUE, so the striped bass population would reach a lower equilibrium, subject to other environmental factors (see D.5 of the Bennett report). No supporting logic or rationale is given for choosing this as an equilibrium condition, nor is any other logic or rationale given for choosing the value of a 60-70% decline. It is not clear whether the word "population" here means population abundance, population biomass, population recruitment, or some

other population indicator. Since CPUE is an index of abundance this equilibrium condition implies the population will have the same abundance after regulations are removed.

II. Accepted Method for Calculating Dependence of Abundance on Regulations

The accepted method for calculating the change in abundance of a fished population is used in virtually all fisheries management where sufficient data are available (Sissenwine and Shepherd 1987, Mace and Sissenwine 1993, Restrepo, et al. 1997, Ralston 2002). It is based upon the mathematical condition for an equilibrium state in a population model that keeps track of age structure and has a density-dependent relationship between total egg production by the population each year and the number of one-year-old recruits (Sissenwine and Shepherd 1987, Botsford 1997). This relationship is commonly called the stock/recruitment relationship.

The stock-recruitment relationship has an important effect on population dynamics because it is density dependent. That is, when a population is small, egg production is low and recruitment will be low. If the population increases a bit, egg production will be higher and recruitment be higher in proportion to egg production (on the left in Fig. 1, at low egg production). However, at higher population levels (toward the right in Fig. 1), when egg production is high an increase in egg production will not cause as large an increase in recruitment. Thus the stock-recruitment relationship in Fig. 1 describes a declining survival from egg to age-1 recruitment (i.e., the ratio of recruitment to number of eggs) as the population egg production increase (i.e., moving to the right in Fig. 1). This decrease in the fraction

surviving from eggs to recruit is caused by density-dependence, which is essentially a “crowding” effect due to limited space or food. This decline in recruit-to-egg survival as the population becomes larger keeps the population from becoming extremely large, and it eventually goes to an equilibrium level.

The equilibrium level of a population can be determined graphically from a plot of this relationship (Fig. 1) (Sissenwine and Shepherd 1987, Botsford 1997).

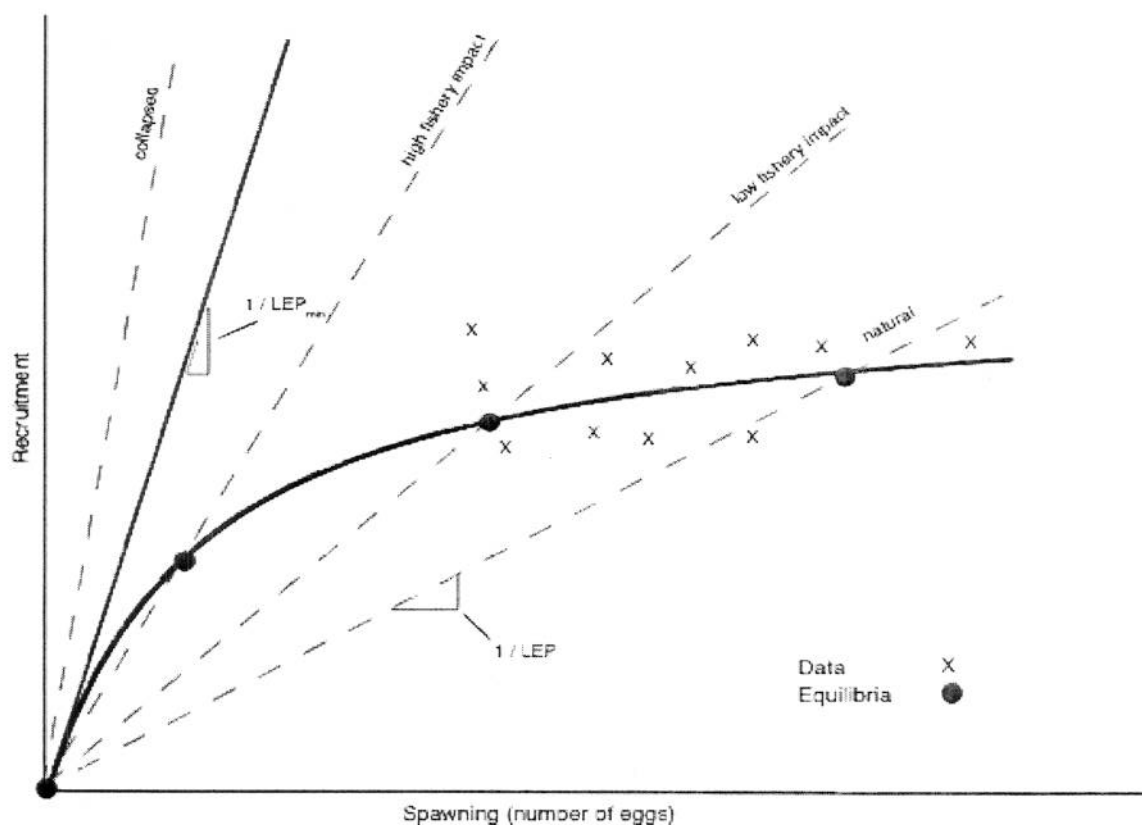


Figure 1. The stock-recruitment relationship (the bold, curved line), and examples of the graphical solution for equilibrium recruitment. The stock-recruitment relationship (curved line) is the number of age-1 recruits that would result from the number of eggs produced by the population in a specific year. The equilibrium can be found by drawing a line through (0,0) with slope $1/LEP$, where LEP is lifetime egg production. The equilibrium is where this line crosses the stock-recruitment curve. Note that as the fishery impact increases, fish do not live as long and LEP declines causing the line to be steeper, and the equilibrium to move to the left. When the slope of the line becomes steeper than the slope of the stock-recruitment curve at the origin, the equilibrium is at zero, i.e., the population has collapsed. Thus the condition for sustainability is the LEP be greater than $1/(\text{slope at } (0,0))$. This

value is typically uncertain because we usually have data only at the high values of spawning and recruitment (as shown by the x's).

The equilibrium level of the population will be at the point where a straight line through the (0, 0) point, with a slope of $1/LEP$ intersects the stock-recruitment relationship. LEP stands for lifetime egg production, which is calculated as the sum over all ages of the fraction surviving to each age times the number of eggs produced at that age. Lifetime egg production (LEP) is essentially the same as eggs per recruit (EPR), a term commonly used in fisheries. The numerical value of LEP depends on fishing regulations since they affect the fraction that survives to each age. As fishing increases, the lifetime egg production decreases, making the slope of the line steeper and the equilibrium moves to the left as illustrated in Fig. 1. This is an important relationship in fisheries management because to maintain a sustainable fishery one wants to avoid having the equilibrium go to zero. That requires keeping the LEP high enough that the intersection of the lines is not zero.

While this method is known to be correct, finding the solution is often difficult, because we do not know exactly what the stock/recruitment relationship looks like at low values. The reason for that uncertainty is that we often do not have population data (i.e., eggs and recruitment) at those low values. In fishery management we try to avoid having low abundance hence we often do not know population behavior at low abundance. California striped bass have not been at low levels since the 1880s, shortly after they were introduced (Leet, et al. 2001). Some populations have gone to population abundance levels low enough that we can estimate the stock-recruitment relationship at low abundance (e.g., Mace and

Sissenwine 1993, Myers, et al. 1999), however we do not know it for California's striped bass.

LEP can be interpreted as a measure of replacement, a familiar concept in the discussion of the growth human populations. Most of us are familiar with the concept of zero population growth (ZPG), i.e., if each couple has two children in their lives the population will remain constant (which is ZPG), if they have less than two children, the population will decline, and if they have more the population will tend to increase. The idea of replacement is that a population can be sustained only if the average individual in the population reproduces enough in their lifetime to at least replace themselves. This concept is the same in fish populations as it is in human populations, i.e., LEP has to be greater than a certain number for a sustainable population. The difference is that we know the minimum requirement for population persistence is two children in human populations, but we do not know how many eggs are needed in the lifetime of a fish for it to replace itself. Fish produce hundreds of thousands of eggs in their lifetime, and a large fraction of them (more than 99%) do not live to adulthood.

III. Bennett Report Did Not Use Accepted Method

The Bennett report did not take the accepted approach to calculating the effects of fishing on populations, and as a consequence the Bennett report overstates the precision with which he can estimate the abundance that would result from removing the regulations ("would reduce the striped bass population by approximately 60-70 %."). (The Bennett report does not explicitly state the precision of this estimate, which is unusual for a scientific estimate, but it gives the

impression that the decline is likely to be between 60 and 70 percent.) There are two major sources of uncertainty in this problem: (1) uncertainty in the knowledge of the stock/recruitment relationship for California striped bass at low values, and (2) uncertainty in the LEP, hence the slope of the straight line in Fig. 1. Lifetime egg production (LEP) depends on the survival to each age, and survival to each age depends on the rate of removal of fish from the population at each age. The amount of fishing that would occur at each age after the fishing regulations were removed is very difficult to predict because the amount of fishing effort under unconstrained conditions is not known. The behavior of anglers often depends on the abundance of fish, and the future abundance is not known.

To take the conventional approach to determining the decline in striped bass with the removal of regulations, Bennett would have had to first have to draw the stock recruitment relationship which would have been impossible since we have no data from that curve for low values of egg production and recruitment. He would also have had to draw a line through the (0, 0) point with slope $1/LEP$. That would have required him to calculate LEP, which depends on fishing mortality. Since we do not know what the response of anglers to removal of regulations is going to be, that too would have been impossible. Without knowing what either line looked like, he obviously could not have found their intersection.

IV. Bennett's Approach

The approach taken in the Bennett report was to perform a number of calculations involving a number of separate aspects of the decline in striped bass in the absence of regulations. I review each of these here:

IV.A. *Simulation Modeling.* Prof. Bennett described his approach to simulation modeling of California striped bass in Section D.1 of the Bennett report. It involves using a constant survival from eggs to age-1 recruits ("I used his average number of eggs to produce an age-1 fish", Bennett report, p. 14). As described above, and in Fig. 1, in a population with density-dependent recruitment the survival from eggs to age-1 recruitment increases as the population becomes smaller, and vice versa. That was left out of the model of California striped bass in the Bennett report. When the density-dependence is left out of population models they will eventually either decrease exponentially to zero or increase exponentially without bound. Real populations do not behave in that way, hence models without density dependence, such as the one in the Bennett report, are not used to project long-term abundance. If populations did grow exponentially the world would be covered with bunnies.

The results of the simulations are shown in Exhibits H and I of the Bennett report. From the figure in Exhibit I, the population is obviously declining to zero. In the actual striped bass population the survival from eggs to age-1 would increase as depicted in Fig. 1, in a way that would be determined by the shape of the stock-recruitment relationship in Fig. 1. This could cause the population to reach a new low equilibrium, which is not possible in the model in the Bennett report. Since we do not know the exact shape of that relationship, it is impossible to accurately predict where the population will end up in the absence of regulations. His simulation with no density dependence is not a reliable indicator future abundance without regulations.

IV.B. *Removing Creel/Bag Limit.*

Section D.2 of the Bennett report describes an estimate of how many fish would have been caught by anglers in the striped bass fishery between 1976 and 2008 if there had been no creel limit. The resulting estimates are shown in the right hand column in Exhibit B. It is very unusual to present results of an estimation without an accompanying standard error of the estimate or confidence limits to indicate what the range of error might be. This limits the conclusions that can be drawn from this result. Also, the report states that this is a “peer reviewed statistical procedure”, but there is no evidence that this application to striped bass was peer reviewed. A peer review would have insisted there be some evaluation of error.

The estimate is based on a method that fits a statistical model to data describing the fraction of fishermen each year that catches 0, 1, 2, 3 fish per day. The number of fish caught per day obviously cannot exceed the creel limit. It then uses that model to predict what those fractions would have been if there had been a higher creel limit or no creel limit. For example, in the paper they refer to by Claramunt, et al. (2009), the authors fit kind of statistical model to data from several years describing the fraction of fishermen that catch 0, 1, 2 and 3 fish per day, where 3 is the maximum bag limit in the fishery they were interested in. They then use that model to predict the number of fish that would have been caught in those same years if the bag limit had been 5 fish, and the same abundance of fish had been present each year.

The application to the California striped bass fishery is quite different. The bag limit is two fish, so fishermen can catch either 0, 1 or 2 fish per day.

Furthermore, the analysis in the Bennett report did not use data on the fraction of anglers catching 0, 1 or 2 fish per day, rather they used the mean and standard deviation of the number of fish caught per day. From these two numbers they attempted to estimate the fraction catching 0, 1, 2, 3, 4, 5, 6, fish per day. They then added them all up to obtain the results given in the right hand column of Exhibit B. It is difficult to say how well so much can be predicted from so little information, especially in the absence of any analysis or statements regarding the precision of the estimates.

Another source of error in the analysis of creel data is that the analysis in the Bennett report used the data from the striped bass creel census, but assumed that creel census data collection was conducted with standard creel census methodology (According to email from plaintiff dated ?). The problem is that standard creel census methodology seeks a random, representative sample of all anglers. The purpose of the striped bass creel census in the Sacramento/San Joaquin Bay/Delta is to determine the fraction of striped bass with tags, for a mark/recapture study. Because of that they seek a representative sample of the striped bass caught. The functional difference between these sampling approaches that is important here is that the striped bass creel census will likely under sample the number of fishermen who have caught not fish. In fact the instruction manual for the technicians doing the creel sample (CDF&G 2009) makes the primary purpose clear and actually states "Anglers with fish should have priority over anglers without fish." The immediate effect of undercounting the number of fishermen who caught no striped bass would be to bias the distribution of numbers caught to higher values. That would seem to

bias the estimate of the number of additional fish that would be caught without an upper limit in a positive direction. Thus the right hand column of Exhibit B of the Bennett report has an unknown positive bias.

At the end of Section D.2 of the Bennett report, these questionable estimates of catches without the creel limit only over the years 1976 to 2008 are used to calculate a mean exploitation rate of 29%. Because the estimate of catches after the removal of the creel limit has a positive bias, the projected exploitation rate of 29% will also be biased high. This presentation of the 29% estimate is then followed by the statement that this would cause the “reproductive potential” to decrease to less than 20% for the population. No basis is given for this calculation there, but the report may be referring to Exhibit G of the “Spawning Potential Ratio.” It is difficult to evaluate what the report is trying to say here. Suffice it to say that if the exploitation rate is not as high as the Bennett report estimates, Exhibit G indicate it could lead to values of SPR that are greater than 20%, the critical value invoked in the Bennett report. Also, whatever “critical value” was developed for the striped bass on the east coast would not necessarily apply to the completely different habitat on the west coast.

To summarize the analysis of creel data to estimate the exploitation rate after the removal of the daily catch limit, first the estimate of how many fish will be caught after the size limit and the creel limit are removed is not a routine application of a common method, but rather is an unusual application of a statistically acceptable approach, but no analysis of potential error is given, which is not acceptable for a scientific estimate. Second, the estimate of number of fish

caught after removal of the catch limit has a positive bias because of the specific study design of the striped bass creel census. When the facts that this analysis accounted for only a removal of the creel limit, not the removal of the size limit, and that no population response to these was included, the estimate does not appear to be useful in predicting the future exploitation rate, hence it does not provide the required estimate of LEP.

IV.C. Yield-Per-Recruit Calculations. In Section D.3 the Bennett Report employs Yield-Per-Recruit analysis. This type of analysis computes the effects of size limits and changes in fishing on the relative numbers at each size and age in a population. It does not account for their effects on the number of recruits in the population, rather all calculations are “per-recruit” regardless of what the annual recruitment of 1 year-olds is. In other words these calculations describe what is happening in a typical cohort, not how many are recruited to begin each cohort. Thus, by themselves, these calculations cannot project the future population equilibrium.

IV.C.1 In section D.3.a and Exhibit C the Bennett report makes the point that if you start with a recruitment of 1,000 fish at age 1, and do not begin fishing until the fish in a cohort are larger than 460 mm (18 in), then the exploitation rate will have no effect on the number that reaches that size. If, on the other hand, you remove the size limit and begin fishing all fish, you will have fewer fish in the cohort reaching 460 mm the harder you fish. These results make sense and seem correct.

However the subsequent statements in this section of the Bennett report, regarding total population abundance, are difficult to follow because the calculations are not given, only the results are stated, and these do not seem to be

correct. For example, to convert numbers in a cohort that begins with a recruitment of 1,000 fish the Bennett report apparently multiplies by the total abundance, not the recruitment, to obtain the numbers 50,000 and 119,000. That would not be correct. The report then invokes the exploitation rate of 29% obtained from the flawed creel census to conclude that the sustainable number of harvestable fish would “theoretically decrease 98% to 20,000 with no limits.” No formula or other basis for this calculation is given. Without such information, it is impossible to evaluate this analysis in the Bennett report. However, in any event, to calculate the change in population abundance one would need to follow the accepted method presented in Section II, above.

IV.C.2. Section D.3.b and Exhibit D of the Bennett report describe the effect of removing the size limit on the yield that would result from a cohort that began with recruitment of 1,000 fish. As the rate of fishing increases, yield continues to increase if there is a size limit, but if there is not a size limit, the yield begins to decrease, basically because yield is given in terms of total weight, and there are far fewer big fish. These are the expected results from this kind of analysis. However, it is difficult to tell where the California striped bass would be on the x-axis. As noted above the value of the exploitation rate after removing the fishery regulations is highly uncertain, and the estimate based on the creel census is unreliable (Section IV.B).

IV.C.3. In Section D.3.c and Exhibits E and F, the Bennett report describes the decline in average length (Exhibit E) and weight (Exhibit F) of a cohort as fishing

increases, both with and without the current size limit. The average sizes of the fish in a cohort are smaller without the size limit, as expected.

IV.C.4 In Section D.3.d and Exhibit G, the Bennett report describes the effects of increasing exploitation on Spawning Potential Ratio. This calculation is relevant to the question of the eventual equilibrium recruitment because the Spawning Potential Ratio (SPR) is the Lifetime Egg Production (LEP) divided by the LEP with no fishing. Thus it is the fraction of natural replacement that remains in the population fished at a specified exploitation rate. As seen in Exhibit G, SPR declines more rapidly with no size limit because fishing begins at a younger age and smaller size. The value of exploitation rate is highly uncertain because we do not know the response of fishermen to the removal of regulations. The report uses the level of exploitation of 30% here, which is based on their analysis of removing the creel limit which is only a poorly supported estimate of what the catches from 1976 to 2008 would have been, not what they would be in the future, with the removal of the creel limit and the size limit.

IV.D. *Modeled Effects of Eliminating Size and Creel Limits.* In Section D.4 of the Bennett report the exploitation rate of age 2 and 3 striped bass is declared to be 17% and the exploitation rate for ages 3 and older is declared to be about 30%. The source of the former number is not given, and the latter is the figure used earlier as a result from the questionable analysis of creel data, as described in Section IV.B above.

These questionable mortality rates are placed in the simulation model I described above in Section IV.A. As noted there, this model represents the survival

from eggs to age 1 recruitment incorrectly. The model does not include the change in that survival with density, nor does it include changes in the amount of fishing as the abundance changes.

IV.E. *Fishery Equilibrium*. In Section D.5 of the Bennett report, the conclusion is drawn that: "At about a 60-70% overall population decrease, the resulting CPUE would be similar to the current CPUE, so the striped bass population would reach a lower equilibrium, subject to other environmental factors." No support or rationale is given for declaring that the equilibrium should occur when the new CPUE equals the old CPUE. Also, no formula or table or other source is given as the basis for the values "60-70%." Furthermore, the term "population" is ambiguous; it is not clear whether this refers to a decline in population abundance, population biomass, population recruitment or some other measure of the population. I note that if catch were expressed in terms of numbers, since CPUE is usually proportional to abundance, the statement that the CPUE would be the same before and after the removal of regulations implies that the abundances would be the same before and after the removal of regulations.

V. Bennett's Conclusions. Section 4G of the Bennett report states that his judgement is based on numerous sources of information, and he lists them. He then states that "All of these sources lead to the conclusion that ...". From my analyses it is clear that none of the modeling analyses lead to the conclusion that the striped bass population will decline by 60-70%. Furthermore, such a decline cannot be precisely predicted because of the inherent uncertainty in the stock-recruitment relationship

at low abundance and the future behavior of fishermen if the regulations were removed.

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List of other cases:

I have neither testified nor given a deposition in any other cases.

Compensation:

I am being compensated at a rate of \$200 per hour for review and consultation, \$250 per hour for deposition, arbitration and/or trial testimony, \$100 per hour for travel, plus out-of-pocket expenses.

Signature of author:

Louis W. Botsford

Exhibit A

Louis W. Botsford
Professor
Department of Wildlife, Fish, and Conservation Biology
University of California
Davis, CA 95616
 530-752-6169
 FAX 530-752-6169
 lwbotsford@ucdavis.edu

Education

June 1967	University of California, Berkeley	B.S.	Electrical Engineering
March 1975	University of California, Davis	M.S.	Electrical Engineering
September 1978	University of California, Davis	Ph. D.	Electrical Engineering

Ph. D. Thesis: Modeling, Stability and Optimization of Aquatic Productive Systems

Positions

1980-present Professor
 Department of Wildlife, Fish and Conservation Biology
 University of California, Davis

1976-1980 Postgraduate Researcher
 Bodega Marine Laboratory
 Economic analysis of fisheries and aquaculture

1975-1976 Teaching Assistant
 University of California, Davis

1968-71 Research Engineer
 Lockheed Research Laboratories
 Palo Alto, CA

Publications

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