



Mid-Atlantic lawsuit targets NMFS' history of flawed data

By Richard Gaines
Staff Writer

September 09, 2009 05:55 am

Even before New England groundfishermen began howling last week, scallopers all along the East Coast and Mid-Atlantic fishing interests were protesting the federal government's continuing use of erroneous catch histories to establish fishermen's earning potential under a new regulatory format.

A multiple plaintiff lawsuit brought on behalf of small boat scallopers against the National Marine Fisheries Service in U.S. District Court in Trenton, N.J., alleges that "poor data quality is a fatal flaw in Amendment 11," which converts the lucrative scallop fishery to the catch share model next year.

The process of putting a total allowable catch on scallops and subdividing that whole into catch shares requires NMFS to determine by past catch history which permit-holding boats qualify to work in the limited-access, catch-share system, which is the top fisheries adaptation to come from the Obama administration. The format is similar to the system being implemented for New England next year.

The bulk of the plaintiffs in the lawsuit work out of ports in New York, New Jersey and Maryland and are contesting how only 10 percent of the scallop bounty is being distributed by the governing NMFS. The bulk of the catch is to be distributed to that port's big boats.

The plaintiffs' attorney, Patrick Flanigan cites a March 1, 2006 set of minutes from a NMFS committee meeting on data quality problems affecting the scallop amendment that contains damaging admissions.

At one point, the committee discussed "continuously discovering ... many errors in vessel trip reports and dealer data-sets" that were beyond the NMFS ability to correct or factor into accurate catch histories.

"We have no expertise or time for correcting these errors," the committee wrote.

At the same time, it also acknowledged that "obviously, in order to determine the participants of limited entry, to set total allowable catches and/or allocate trips or pounds to the general category vessels based on passed history, we need to have accurate data."

The Fishery Management Action Team Committee meeting minutes were produced by NMFS during the discovery process.

Flanigan argues that the admission of helpless dependence on bad data would produce "arbitrary and capricious" decisions to exclude certain permit-holders from the scallop fishery.

He noted there were no further references to quality control issues with the data used to determine qualifications to catch scallops.

The minutes also illustrate that, as far back as early 2006, NMFS was aware that it could not produce a dependable output of accurate catch histories, which have become pivotal calculations in the era of catch shares as the commonly held wild stocks are converted into allocations and assigned to qualified participants in closed-access fisheries.

Jane Lubchenco, the administrator of oceans for the Obama administration, and the two environmental lobbies — the Pew Environment Group and the Environmental Defense Fund — that were launching pads for her ascent to the top post at the National Oceanic and Atmospheric Administration, are promoting catch share privatization as a cure-all for the ills of the nation's fisheries while pushing catch shares on investors.

But, in June 2007, fishermen in the Mid-Atlantic states — New York through the Carolinas — exposed the gross flaws of the system of data collection and calculation at NMFS that were producing often incomprehensible catch histories.

Last week, a number of New England groundfishermen told the Times they faced the possibility of having their catch shares reduced in line with badly understated catch histories.

NMFS spokeswoman Maggie Mooney-Seus said the agency has acknowledged the problems, but cannot make corrections in time for the onset of sector/catch share fishing next May.

Mooney-Seus said Oct. 31 was the deadline for filing complaints about faulty data for rectification in time for the 2011 fishing season. She said NMFS has repeatedly raised the point "that dealer reports are designed to support stock assessments and quota monitoring, and are far less precise than what is needed for sectors."

Jimmy Ruhle, a North Carolina fisherman and critic of NMFS science, trawl capabilities and record-keeping, cracked the door to the subject when took the microphone at the meeting in Hampton, Va., to assert that "this is going to be a big, big problem." He moved to request that NMFS "initiate a complete, thorough review of vessel landing history records.

A number of fishermen quickly chimed in after Ruhle, the president of the Commercial Fishermen of America.

"I am in the process of gathering information to come through with the sector allocation proposal, and in that process I needed to get the information from NMFS" Geir Monsen, who owns Seafreeze Ltd. in North Kingstown, R.I., told the council.

"What I've got so far is the worst workmanship I ever have seen of any type of work," Monsen said. "If this record-keeping was in a commercial company, the company would be bankrupt and the people in charge of the record-keeping would be in jail for falsifying records."

Monsen said he saw no attention to quality review of the data that's being used as a base for setting fishermen's total allowable catch. The catch share system is on track for being implemented for the New England Fishery next year.

"You go from a series of trips landing 500,000, 600,000 pounds and then all of a sudden you've got a 3,000 pound trip with fluke and scup and sea bass; — it's just that nobody's looking at the quality of what is being entered."

Similar analysis came a number of others including Vinny Carillo of Point Pleasant, N.J. "I have some trips that are totally missing, and I have fishing vessel trip reports that have gone in (to NMFS) for my 30,000 in whiting, I have dealer reports — electronic dealer reports, and they correlate to my 30,000 pound trips of whiting," he told the Mid-Atlantic Council.

"But NMFS has absolutely no record of them ... there are gross inaccuracies in my landings," Carullo said.

Based on the testimony, Daniel Furlong, executive director of the Mid-Atlantic Council, wrote after the meeting to Patricia Kurkul, NMFS regional administrator.

"Dear Pat: I think you have a problem," wrote Furlong.

He described the "overarching concern" that, as the service moves forward with a mandate to shift the nation's fisheries into limited access, catch share models, "the potential participants may be disadvantaged owing to inaccuracies in the agency's record of their landing histories."

He urged Kurkul to initiate some "testing protocol to verify that the participants' histories are accurate"

"To go forward with sectors and catch shares without fixing the problem is totally irresponsible," Ruhle said in a telephone interview.

Richard Gaines can be reached at rgaines@gloucestertimes.com.

Copyright © 1999-2008 cnhi, inc.