

Standard-Times (New Bedford)

A battered NOAA will likely head to court in March

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NEW BEDFORD — Early this year, when fishermen and elected officials joined forces and won an unprecedented relaxation of overly strict scallop limits, rather than being the end of a story, federal regulators were getting just a taste of what was to come.

The big battle began when the New England Fishery Management Council and the National Marine Fisheries Service rolled out and imposed Amendment 16 of the Magnuson-Stevens Act, introducing "sector management" of the Northeast groundfish fishery and igniting a tinderbox of opposition.

It was fueled by a legal bombshell: The Commerce Department's inspector general revealed in great detail deep problems within fisheries law enforcement, validating years of complaints by aggrieved fishermen, particularly in the Northeast.

Before long, the umbrella agency for fisheries management, the National Oceanic and Atmospheric Administration, found itself embattled from without and within — and experienced a year in which its reputation was seriously bruised and its chain of command broken by the intervention of the secretary of commerce.

On the surface, it might not appear that NOAA has changed course. Sector management is in place and, as predicted, boats are going out of business. Support services are shrinking. Fishing activity is concentrating itself among a minority of license holders.

But as fisheries advocate Robert Vanasse of Saving Seafood (www.savingseafood.org) pointed out, things are dramatically different today than last spring.

For one thing, fisheries law enforcement in the Northeast is in the throes of a dramatic shakeup, with its top agent, Andy Cohen, retired; and top lawyer, Charles Juliand, being reassigned. The No. 1 and No. 2 law enforcers at the National Marine Fisheries Service, Dale Jones and Mark Spurrier, have been reassigned.

The whole law enforcement apparatus is in the hands of a special master, including the loosely supervised asset forfeiture fund. The inspector general has signaled the possibility of an investigation of the fisheries rule-making process itself.

Perhaps most significantly, U.S. Commerce Secretary Gary Locke, after getting an earful from about a dozen members of the House and Senate from fishing states, has stepped in and bypassed NOAA Director Jane Lubchenco on the question of relaxing quotas, offering to invoke his emergency authority if the need is documented to his satisfaction.

On that score, Gov. Deval Patrick this month wrote to Locke, urging him to decide soon, because the damage within the industry is ongoing. So far there has not been a response from Locke.

The fact that the members of Congress working together to pressure NOAA come from both political parties is remarkable in the current polarized political atmosphere, said Vanasse, himself a former Capitol Hill staffer. "They are working together in an unprecedented, bipartisan, multi-state way," he said.

Apart from fishing quotas, the biggest question mark hangs over Amendment 16 and sector management.

U.S. Reps. Barney Frank, D-Mass., and John Tierney, D-Mass., who represent New Bedford and Gloucester, respectively, this week filed a "friend of the court" brief in support of the lawsuit against the Commerce Department filed by those cities to overturn Amendment 16.

Their argument: that Amendment 16 and the process under which it was developed are blatant violations of the Magnuson-Stevens Act. The act, say the plaintiffs, requires the government to study the economic effects of conservation rules and minimize them, while seeing to it that the fishing industry can maintain an "optimal yield."

The critics say NOAA has done none of that, but instead issued punitive, ill-considered regulations designed not to conserve fish but to shrink the fishing industry and put it in the hands of a few big players.

Locke has given no indication that he is ready to reverse Amendment 16 or end sector management. Instead, it is likely to be the federal courts that settle the issue. Motions are currently being filed by the two sides, and the case is scheduled to be heard starting in March.