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Top feds stand by catch shares

By Richard Gaines

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After more than two months of study, the Obama administration's commerce and fisheries leadership did more than just reject the finding that its catch share system while making a few people wealthy had produced a general "commercial fishing failure" in the New England groundfishery.

In sweeping aside that conclusion by academic scientists at the University of Massachusetts at Dartmouth and rejecting the accompanying request for economic and financial relief from Gov. Deval Patrick, U.S. Commerce Secretary Gary Locke and Eric Schwaab, administrator of the National Marine Fisheries Service, defended the catch share system as working as it was engineered to do, and said it is certainly not the cause of any harm.

Locke limited his comments in identical letters Friday to Gov. Deval Patrick and Congressman Barney Frank to a polite discrediting of what is, to date, the only independent credentialed analysis of how the new management system, rolled out for the New England groundfishery last May, was doing.

Locke based his legal rejection of the request on the finding that the Massachusetts report did not include "new scientific data."

But fishing industry backers noted that the sections of the Magnuson-Stevens Act that define disasters and what the government might do in response to them does not contain language that requires "new scientific data."

"There is nothing in the statutory language that requires new scientific data," writes Julie Peterson, an attorney on the legal team behind the federal court challenge to the same catch share system. The court suit has been filed by the cities of Gloucester and New Bedford and by a variety of fishing interests.

"The statute doesn't even define emergency. It's in his discretion," Peterson wrote in an e-mail to the New Bedford Mayor Scott Lang, and Brian Rothschild, the dean of marine science at UMass-Dartmouth.

"The 'new data' idea seems to arise from an unreasonably cramped view, no, strange misinterpretation of NOAA's own policy, which does not in fact limit 'emergency' to only those situations involving 'new data,'" she added. "It defines emergency as involving 'recent unforeseen events or recently discovered circumstances.'"

As for the defense of the new system, Locke largely left that to Schwaab, and it was he who, in a 41/2-page rebuttal to the state's submission, attempted to make what fishermen see as a silk purse out of the sow's ear.

Where the Massachusetts report found the "transition to catch shares ... caused unforeseen major shifts in the distribution of quota (and income) resulting in \$21 million in direct economic losses and forgone yield of \$19 million for the Massachusetts groundfish fishery," the Obama administration, as Schwaab put it, sees "positive signs for the fishery in the first six months of the fishing year."

In this, Schwaab has put the administration in lockstep with the coalition of ENGOs — environmental non-government organizations led by the Environmental Defense Fund, the Pew Environment Group and the Conservation Law Foundation — that advised against granting the governor's request, which would have meant admitting that catch shares were less than advertised.

"With his decision to reject Gov. Patrick's request to increase catch limits," said CLF's senior counsel, Peter Schelley, "Secretary Locke has rightly rejected the notion that the new fisheries management plan is contributing to an economic crisis in the Massachusetts fishery."

"On the contrary, fishing industry revenues in Massachusetts are up 21.9 percent over 2009 in just the first seven months under the new 'catch shares' management system," Shelley wrote. "The governor's demand for emergency action was more about politics than economics."

Schwaab, the defender of the catch share experiment in New England, was the belated appointment of former EDF board vice chairwoman Jane Lubchenco, who named him to the top National Oceanic and Atmospheric Administration Fisheries post last February, almost a year after she was confirmed by the Senate to head NOAA under the Obama administration,

Plucked out of a state office in Maryland, and lightly credentialed in marine matters, he was the alternative to the only viable candidate offered to Lubchenco, Brian Rothschild, a longtime friend of the fishing industry, the nominee of Barney Frank and many of his ocean coalition colleagues, notably Republican Walter Jones of North Carolina.

Ironically, Rothschild's name — as co-chair of the Massachusetts Marine Fisheries Institute — was at the top of the report that Locke sent out Schwaab to stomp on.

The next step in this clash won't be long in coming, Frank is slated for a live radio appearance around 9 a.m. today over WBSM — 1420AM, and accessible over WBSM.com).

In March, the hearing will be held on the federal lawsuit before U.S. District Judge Rya Zobel in her Boston courtroom.

Before then, there is also the unresolved matter of the extraordinary request by the industry plaintiffs — including Gloucester and New Bedford — that Zobel allow special discovery into suspicions that the ENGOs have exerted improper influence on the making of the catch share policy.

The Conservation Law Foundation has filed a formal objection to the motion, demanding that any documents related to exchanges between the environmental groups and regulatory bodies be kept under wraps.

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