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Suit: New fish regs not enough

Environmental group says fish not protected enough

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A third lawsuit, alleging a new experimental management plan for the New England groundfishery has legal flaws, has been filed by an environmental group — but this suit, unlike the other two, says the plan's fishing limits and conservation measures fall too short.

The suit by **Oceana** complains that the federal government has no good way to limit the waste of fish caught and discarded as bycatch, and asks the federal courts to plug the alleged loopholes.

Filed in U.S. District Court for the District of Columbia on May 7, the suit pushes for greater controls and more rigorous conservation — a push in the opposite direction of those taken in two fishing industry suits filed in the last week, which petitioned for relief from fishing limits said to be ruinous.

The Oceana suit asserts its members' interests are eroded by allowing the stocks to remain weakened, and the protections sought are for the fish, while the industry suits seek help for the fishermen.

The Oceana suit complains that the National Marine Fisheries Service violates the Magnuson-Stevens Act because the new management plan, known as Amendment 16, "fails to establish a bycatch monitoring system adequate to track catch for the purpose of complying with catch limits during the fishing season, and fails to impose accountability measures ... so that fishing enterprises have no incentive to stay within the catch limits set for the stocks."

Amendment 16 is the first New England fisheries plan written under the aegis of the 2006 reauthorization of the Magnuson-Stevens Act which requires hard catch limits and accountability measures and bars bycatch, the discarding of unwanted fish. Put differently, the law requires the counting of all legal-sized fish against the required hard catch limits.

The amendment's management plan went into effect May 1, and requires onboard monitors on 38 percent of the vessel trips, which Oceana's suit asserts is not sufficient to impede the discarding of fish.

Gib Brogan, Oceana's New England programs manager, said his organization is also concerned that yellowtail bycatch in the scallop fishery is not controlled, and that weaker species such as winter flounder need stronger controls.

But Jackie Odell, executive director of the Gloucester-based Northeast Seafood Coalition, said Amendment 16 also sets up a system of guild-like companies of fishing boat businesses using similar fishing methods and holds the group or sector accountable for violations by an individual.

With sanctions against the group and individual arising from violations, Odell said she believed the amendment is strong and will be effective.

Monitoring on boats and the docks is an unknown cost of the new system, which also converts the common wealth of the oceans into assigned catching rights, or catch shares, thus creating a commodities market in these shares.

The federal government has budgeted about \$8 million for monitors this year and will subsidize the system in 2011 as well, but there is no expectation the subsidy will be continued beyond then, leaving the cost to the fleet.

Brogan said Oceana does not have a handle on costs but has pushed NMFS to do the analysis to determine what system and cost is needed. "We've been active in the congressional budgeting process," he said, adding he was confident the money could be obtained to produce a bona fide monitoring system.

"We don't know what the answer is, but we've been pushing the agency to answer that question," Brogan said.

The New England Fishery Management Council recently obtained the support of the groundfishing industry to shift 200,000 pounds of yellowtail from fishermen to scallopers to be used by them in their pursuit of the nation's No. 1 cash stock.

But Brogan said the scallop boats can overfish the yellowtail, a recovering stock, and accountability measures are not in place to deter that.

Gloucester, where groundfishing is centered, and New Bedford, where scalloping is king, agreed to the shift to put the yellowtail to a more valuable use as bycatch.

The flatfish are caught in the same nets as scallops. The sacrifice by Gloucester's groundfishing boats was considered a landmark step in the often contentious incompatible interests of the ports.

Gloucester and New Bedford's mayors partnered again to file the more important of the two industry suits that allege that Amendment 16 disregards the well-being of the fishing boats and puts the industry in a death spiral.

The suit asks for economic relief in the form of more allowed fish catch and other emergency measures.