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[Suit cites NOAA sham in catch share scheme](#)

By Richard Gaines Staff Writer

Gloucester's and others' legal challenge to the Obama administration's management system for the New England groundfishery — a challenge to the government's interpretation of the Magnuson-Stevens Act — has come into sharper focus through a flurry of filings in U.S. District Court in Boston.

Together, the documents described the latest program pushed forward by NOAA in Amendment 16 as a misguided, camouflaged, agenda-driven and "illogical" sham aimed at disenfranchising small businesses while giving windfalls to larger company's and investing corporations.

Congressmen Barney Frank and John Tierney, both Massachusetts Democrats, last week jointly submitted an amicus brief to the original suit filed last summer by commercial fishing interests — and the cities of Gloucester and New Bedford — while nonprofit Food and Water Watch also filed a memorandum in support.

The case was assigned to U.S. District Court Judge Rya Zobel, with the National Oceanic and Atmospheric Administration having 30 days to respond to the briefs. The court has yet to rule on the applications of Food and Water Watch to join the suit on behalf of the industry, or the earlier request of Conservation Law Foundation to come in as an ally of the government.

Tierney "is deeply concerned that, under the catch share/sector allocation program, fishermen are faced with decreased income, unfair consolidation and job loss," wrote his attorney, a former chief counsel at NOAA.

Industry referendum

The two memorandums by the congressmen and Food and Water Watch agree that NOAA and the New England Fishery Management Council — an arm of the agency — intentionally concocted false arguments designed to legally rationalize not giving the industry a congressionally-required referendum before converting the groundfishery into a catch share management system, in which fishermen working in cooperatives are assigned shares of a total allowable catch for each fish stocks. The shares can be bought sold or traded either among permit holders, or sold to outside interests, creating natural resource commodity markets with rapid trading and speculative investment.

At the core of the case are assertions by the plaintiffs — a broad industry cross section, including the city of Gloucester itself — that NOAA has willfully misread aspects of the 2006 rewrite of the Magnuson Stevens Act, setting limits based on the weakest stock in the sea in a complex of 19 — many of which are recovering or recovered — and without considering the limits' impact on fishing economies and local communities.

Co-written by industry attorneys Stephen Ouellette, of Gloucester, and Pamela Lafreniere, of New Bedford, the suit alleges an improper motive, and claims the administration is acting under the influence of environmental non-government organizations to weaken the industry, introduce the catch share commodities market system and open the door for external investors.

Seeking discovery

This suspicion is behind an unusual motion to allow discovery of internal communications between NOAA officials, specifically NOAA administrator Jane Lubchenco and her special assistant Monica Medina, a longtime Democratic operative and environmental attorney-activist.

"The regulatory scheme established under Amendment 16 has the practical effect of transferring the ability to fish to large, industrial-scale fishing vessels while pushing out smaller-scale fishermen," Cambridge attorney Arthur P. Krieger wrote for Food and Water Watch.

NOAA chief Lubchenco's first public act after her confirmation in March 2009 was to prod the New England council to approve its version of the system. The act was done within two months, without any limits on the concentration of equity.

"Like the fishermen of New Bedford," Washington, D.C. attorney Eldon Greenberg, the former NOAA chief counsel, wrote on behalf of Congressmen Frank, whose district includes New Bedford, and Tierney, whose 6th District includes Gloucester, all of Cape Ann and much of the North Shore.

Frank "believes that this system favors few, wealthy participants at the expense of others and will inevitably lead to the contraction of the industry," Greenberg wrote.

In a written response to queries from the Times soon after her early 2009 Senate confirmation, Lubchenco asserted that consolidation, seeing a "significant fraction" of the boats eliminated as an expressed goal of administration fisheries management policy in New England.

EDF policy

The Environmental Defense Fund, where Lubchenco served as vice chairwoman before her appointment to head of NOAA, has been catch shares' leading cheerleader and has moved into partnerships with the administration on the Pacific and Gulf coasts as well as in the Atlantic.

While still in her role at EDF, Lubchenco said she helped write a position paper for the incoming administration, and, since her confirmation, she has made the EDF catch share plan a national policy.

David Festa, an EDF vice president, also advised investors at a Los Angeles conference in early 2009 that early acquisition of stock in the nascent fisheries commodities markets could produce returns in excess of 400 percent.

The opposition to administration fisheries policy has spurred a unique, bipartisan, bicameral coalition of opponents that includes northeastern and southern Democrats and Republicans.

Commerce chief's concession

Since last summer, as industry anger at Lubchenco continued to boil, she ceased appearing as the point person for the administration on fishing, leaving that task to Commerce Secretary Gary Locke. He conceded a key point to the fishing caucus headed by Frank, and acknowledged that he had the power to increase allocations in an economic crisis.

Days later, Gov. Deval Patrick sent Locke a dossier of evidence that the new regimen had begun strangling the hub ports, as more than two out of the three boats that had been fishing were now tied to the dock.

Meanwhile, a small group of fishing boats in Chatham — tightly allied with EDF and the Pew Environment Group — was shown by a briefly published market report to have sold the right to catch more than 2 million pounds of fish to sectors.

The Cape Cod Commercial Hook Fishermen's Association had gained a special yardstick for its allocation, the five best years it had while using less intrusive gear. The environmental watchdog Oceana also cried foul, arguing that the group was profiteering.

The industry and cities' lawsuit cites the advantageous position given the Cape Cod association by the government as a violation of the Magnuson mandate to provide no special economic benefits in devising management regimens.

Councilors' dual roles

The discovery request zeroes in on Lubchenco, Medina, John Pappalardo, who heads the New England Regional Fishery Management Council and Sally McGee, who serves on the council. Pappalardo is CEO of the Cape Cod fishermen's association; McGee is a senior staffer at EDF.

Food and Water Watch's brief also notes that the system in practice in New England was certain to shift fishing capability into the hands of the trawlers, thus creating a negative environmental impact that the government should have seen had it done a bona fide environmental impact statement before Amendment 16's launch.

The watchdog group has been a leading opponent of catch shares, noting the way the system in other countries has swept away legitimate small businesses while concentrating equity in the hands of businesses organized to fit into the corporate global market.

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