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Published: April 07, 2009 05:55 am

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NMFS eases Interim Rule



By **Richard Gaines**
Staff Writer

The National Marine Fisheries Service yesterday announced New England groundfishery regulations for the next year that are less drastic than a preliminary proposal but still are calculated to cost the industry 9 percent of its revenue.

Dropped from the draft that was published in January for comments — mostly negative — was a virtual ban on commercial fishing within a huge swath of waters along New England's southern coast, from Long Island, N.Y., to deep into Georges Bank.

Also dropped was a proposal that would have more than quadrupled the area in the Gulf of Maine where one day's fishing counts for two against a fishermen's license. The abandoned idea would have spread the inshore two-days-for-one area far into the gulf.

NMFS had been put on notice by U.S. senators and representatives from New England that implementing the initial package would have triggered a congressional nullification campaign, and driven NMFS' standing with its stakeholders even lower.

Instead, the Interim Rule announced yesterday by Jane Lubchenco — the new head of NMFS' parent agency, the National Oceanographic and Atmospheric Administration — cuts fishing days at sea on federal permits by 18 percent and charges a day of fishing as two throughout southern New England waters. The revised rule, due to take effect May 1, also mandates no landings of winter flounder, the stock singled out for protection in the earlier proposed closing of the southern waters. But it backs off the tighter NMFS limits.

Immediate reaction was generally positive. But in the aftermath of the publication of a 127-page regulatory package without the environmental impact statement or detailed breakdowns of projected economic impacts, appreciation for the improvements were guarded and nuanced.

U.S. Sen. Olympia Snowe, R-Maine, said she was relieved that the "patently unworkable, unfair and ill-conceived" draft Interim

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Rule had been replaced by a final rule that provides "a glimmer of hope for this beleaguered industry."

Lubchenco announced the final Interim Rule in a teleconference at which she emphasized the need to ensure the survival of the fishing industry while depleted stocks are restored.

"We must not allow our proud fishing communities to fail," Lubchenco said in initial remarks. "We cannot, and will not allow this proud and vital industry to disappear. We will be a good partner with fishing communities."

Lubchenco also announced an effort to find money in the NOAA budget for mitigating the impact of the Interim Rule, which she described as "a bridge" to a future sustainable industry, that should be able to "harvest three times" the current yield, once the fishery is stabilized and restored.

With support from much of the industry, the New England Fishery Management Council is nearing completion of the writing of Amendment 16, which is scheduled in 2010 to replace the longstanding effort control system of rebuilding the fishery with a system of "catch shares."

The government is under mandate to produce a healthy fishery by 2014.

Still in the making, the "catch share" system is to be based on a series of cooperatives known as "sectors," which shift much responsibility from government to the private structures. The system is also based on the fishermen's actual catch, compared to the current system, which regulates the fishermen's effort by limiting access to areas and their days at sea.

The tenor of Lubchenco's teleconference yesterday was markedly different from the rigidity of Patricia Kurkul, NMFS' Gloucester-based regional administrator, who theorized repeatedly since January, when she published the draft rule for comment, that the Magnuson-Stevens Fishery Conservation and Management Act required the extra tough measures to protect the most distressed stocks — even at the cost of the fishing communities.

Kurkul and her immediate superior, James Balsiger, NMFS' acting administrator for fisheries, were at the announcement in Washington, D.C., with Lubchenco.

Nominated by President Barack Obama, Lubchenco was confirmed last month by the U.S. Senate during a moment of NMFS' extreme isolation from the stakeholders in the New England fishery — the industry, the council, which is a policy-making and advisory group of industry and government figures, and Congress — and a federal judge.

The council had asked NMFS for an Interim Rule to allow it time to complete work on next year's Amendment 16 after a scientific assessment found that some stocks were not recovering at the desired speed, but, on a 15-1 vote last September, it urged a less restrictive rule than Kurkul proposed. Kurkul, the lone dissenter on the 15-1 vote, still put the hard-line Interim Rule in place; the Interim Rule announced yesterday by Lubchenco was closer to what the council had supported.

Lubchenco had been meeting with stakeholders — fishing people

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and environmentalists — and has been involved in a semi-public dialogue with Sen. Snowe over the Interim Rule and the underlying collapse of amity and trust around Kurkul's administration of the region's fishery.

First to react to the announcement was Snowe. She interpreted the final text of major changes from the Kurkul draft as recognition of "the inherent flaws" in the original proposal.

Snowe added that she was encouraged that Lubchenco would follow through with "decisive action to heal the rifts between the industry and regulators."

Jackie Odell, executive director of the Northeast Seafood Coalition, a Gloucester-based industry group that is organizing sectors, was among those who greeted Lubchenco's announcement with guarded optimism.

Odell said she sees reason to prefer the final to the draft, but added, "We cannot lose sight that these measures still present an enormous (economic) loss from where we are today."

She also said it was difficult to believe that the industry will only lose the 9 percent of income, or \$17.4 million, projected by Lubchenco, when days at sea will be reduced by 18 percent and differential counting will be far more expensive.

In a similar vein was the reaction of Mary Griffin, the Massachusetts commissioner of fish and game. Her agency is represented on the council and helped bring the case against Framework 42. She said "we appreciate" Lubchenco's "fresh look at these issues and commitment to finding (technological and infrastructure) resources to help the industry.

But Griffin also said she was concerned about the impact of the expanded two-for-one counting of days at sea throughout the southern waters.

The Cape Cod Commercial Hook Fishermen's Association said the rule would hurt, but was a "viable compromise that clears the way" for the transition to sectors, which are in use by its members.

Environmental groups also reacted positively to Lubchenco's emphasis on the Interim Rule as a bridge to the new system of "catch shares," which were the point of emphasis in a high-profile action agenda for the Obama administration's oceans policy.

Written by a working group co-chaired by former Interior Secretary Bruce Babbitt that featured Lubchenco, a celebrated marine biologist, the "Oceans of Abundance" report urged the new president to "make catch shares a priority in the first 100 days" — or by the end of April.

The influence of the Pew Environment Group unified the Babbitt working group. The group has been pursuing an aggressive, science-based campaign to end "overfishing," and extends its reach via the enormous wealth of the Pew Charitable Trust, which was formed by the descendants of the founder of the Sun Oil Co.

Pew critics, however, have questioned the validity of its science, especially one report that 90 percent of the alpha predator-fish had already been killed, creating the likelihood of oceans ruled by jellyfish.

Lubchenco is a former Pew fellow.

Pew Environment Group's New England campaign manager Peter Baker yesterday lauded the revised Interim Rule as "a step

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toward achieving the necessary transformation" of the New England fishery "to a catch-based management system using sectors."

Baker had been highly critical of Kurkul's initial draft rule, describing it as more of the wrong medicine that would further weaken the industry.

The Conservation Law Foundation likewise saw wisdom in Lubchenco's rule.

"We appreciate the significant negative impacts that the Interim Rule is likely to have on fishermen in New England," said CLF's Peter Shelley. He said there was "much common ground" that the industry and conservationists share.

Shelley had harsh words for the system that had been in place.

"Why is the fishing industry and the fishing resource still in crisis after 30 years of so called management?" he asked.

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

While new National Oceanographic and Atmospheric Administrator Jane Lubchenco yesterday announced an Interim Rule closer to one sought by the New England Fisheries Management Council, word also came from NOAA headquarters in Silver Spring, Md., that Lubchenco has decided to attend a scheduled meeting of the New England council tomorrow, and speak to the gathering of fishing interests meeting Mystic, Conn.

The council today undertakes a pivotal debate at the direction of US District Judge Edward Harrington. It pits the council against the National Marine Fisheries Services, a division of NOAA, which in New England, at least until yesterday, was personified by Kurkul, NMFS' Gloucester-based regional administrator, in a struggle over the so-called "mixed-stock exception."

In an opinion regarding a suit filed by the states of Massachusetts and New Hampshire over NMFS' regulation of the fishery — especially the two-for-one discounting of permits — Judge Harrington in late January chastised NMFS' regional office for giving only "lip service" to one of its own rules that requires serious consideration of a management scheme that would allow some overfishing of the weakest stock in the fishery to allow optimum yield of the overall fishery. The current NMFS regulations are based on the recovery of the weakest species, while critics have noted that many of the species are showing recovery, and should be more accessible to fishermen.

The dispute highlights conflicting — seemingly incompatible — interpretations of the Magnuson-Stevens Act, with Kurkul and NMFS asserting that the law requires managing to the weakest link, and the states insisting that the Magnuson statute makes no such demand.

In a brief submitted to the council for today's debate, Gloucester-based industry lawyer Stephen Ouellette, wrote that, "although achieving maximum sustainable yield on each stock ... is desired, it is not required and probably impossible."

The Boston judge asked the council to report back to him on the applicability of the mixed stock exception before deciding the issue and ruling on the larger dispute over the legality of Framework 42, the larger regulatory scheme that has been in place since 2006 with its two-for-one counting provision. Harrington suspended Framework 42 in his January ruling.

- Richard Gaines


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 **glostafan** 1 day ago

Shelley had harsh words for the system that had been in place.

"Why is the fishing industry and the fishing resource still in crisis after 30 years of so called management?" he asked.

The answer: Because if the truth was told that the stocks were fine then all the beaurocrats would be out of thier giant salary jobs!

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 **Paul_Cohan** 1 day ago

The only real crisis we face is NMFS. Perhaps there's real change in air. Of course this revision of the interim rule demands the question, why was this all necessary in the first place? Thought provoking...

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 **Demchog** 17 hours ago

Don't forget that there are still a great number of us out here who believe that NMFS was correct in their January interim rule proposal. In in order to stay on the Magnuson rebuilding time line, still required by LAW i believe, there needs to be a large cut in the days and possession limits commercial boats are allowed for this interim year.

What will happen when the sectors are in place next

year? There will be hard limits, meaning the sector fishing be shut down when their individual catch limits are reached. And now that the new NMFS leadership has given in for this year, next year the catch limits are going to be very, very low. Those low catch limits will come out of the NMFS Science committees as required by Magnuson.

It is possible that the commercial fishing industry has just "jumped out of the frying pan and right into the fire". Hard catch limits are exactly what the NGOs want, and exactly what the industry has just given them. I wasn't sure we were ever going to see hard Total Allowable Catches in my life time. But now we are going to get them next year.

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