

Judge rejects Mass. ports try to overturn fish law

By Jay Lindsay

Associated Press / June 30, 2011

BOSTON—A federal judge on Thursday rejected arguments by New England's two largest ports that key parts of disputed new fishing rules are flawed and should be struck down.

Judge Rya Zobel released her order in response to a suit by plaintiffs, including the ports of New Bedford and Gloucester, who argued the rules were based on faulty assumptions by federal regulators that would bury the industry. But Zobel ruled against the plaintiffs on all counts.

The new fishing regulations, enacted in May 2010, have led the vast majority of fisherman to divide themselves into groups called "sectors," which share their allotted catch of groundfish -- such as cod, haddock and flounder -- and work together to divide it.

The aim is to give fishermen more autonomy at sea and flexibility to catch certain species of fish when market prices are higher. But the suit argued the catch allotments were unfairly determined by regulators, and so low that the region's small boat fleet will inevitably collapse.

Zobel said there was "no dispute" that federal regulators at the National Marine Fisheries Service were aware the tough new rules would have a "negative short-term economic effect on the fishery."

But she also said it's clear the agency believes the new rules can offset some of the pain until the industry benefits from recovered fish stocks. She backed all of the agency's disputed decisions.

Peter Shelley, of the Boston-based Conservation Law Foundation, which supports the new rules, called the ports' legal case "very weak," and said Zobel's ruling should end the dispute over the new rules. The rules need to be improved, he said, but they ultimately will help fish and fishermen.

"I hope this is the end of it," he said.

Sen. John Kerry said the ruling was a "really disappointing decision and I hope it will be appealed and reversed."

"It's not a close call, it's a bad call when we're talking about the livelihoods that hang in the balance," he said. "The way regulations are interpreted and enforced have sent too many fishermen into bankruptcy and pushed even more to the brink."

A key argument in the suit was that federal regulators misinterpreted the law and have been wrongly trying to manage the 20 fish species that live in New England waters individually instead of looking at the combined health of the entire group. As a result, the suit said, they're protecting the weakest species with regulations that are so onerous they prevent fishermen from catching the healthy stocks that swim among them.

Zobel said that while there is ambiguity in some of the language in the federal fisheries law, the bulk of it clearly supports the fisheries service interpretation that each species must be managed individually.

The plaintiffs also argued the new regulations created a quota system that requires a two-thirds vote of approval by fishing boat owners, captains and crewmen before the rules actually can be put in place.

Zobel called it a "close call," but agreed with the fisheries service that no vote was needed. The service argued the allocations are not hard quotas because fishermen in a sector combine and share them, and can conceivably catch more or less than their allocation.

Zobel also rejected claims that the catch allotments were unfairly divided, with some favored groups given more fish than others.

"The record shows that the Agency's allocation method is rational," she wrote. ■