

Lawyers Aid Groundfishermen in Protecting Depleted Fish Stocks



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ELLSWORTH — For more than a decade, Roger Fleming led the Conservation Law Foundation's legal push to force federal fisheries regulators to restrict the efforts of New England's groundfish industry in order to rebuild the region's depleted stock of fish such as cod and haddock.

Now Fleming works for the public interest law firm Earthjustice and is representing two groups of Maine groundfishermen in an effort to accomplish the same goal — protect the region's depleted fish stocks.

Last week, Earthjustice filed a petition asking United States Secretary of Commerce Carlos M. Gutierrez to take emergency action to ban midwater herring trawlers from areas in the Gulf of Maine that are closed to groundfishing boats. The petition was filed on behalf of the Midcoast Fishermen's Association, based in Port Clyde, and the Northwest Atlantic Marine Alliance, from Portland. Both groups represent trawlers that fish for groundfish in the Gulf of Maine.

A decade ago, when the New England Fishery Management Council (NEFMC) developed a new multispecies fishery management plan, midwater trawlers were allowed to fish in several areas that were closed to groundfish trawlers. The rationale behind establishing closed areas was to set aside areas where groundfish could be allowed to spawn and grow undisturbed. Some of the areas are closed throughout the year. Others are closed on a seasonal basis.

In New England, midwater trawlers fish primarily for herring in the Gulf of Maine. When the closed areas were established they were few in number, and relatively small.

Now, the midwater boats can reach 180 feet in length and tow huge nets. Sometimes working in pairs, they can tow even larger nets that scoop up vast amounts of herring and other sea life, including groundfish.

That is the problem, Fleming said. When the closed areas were created, fisheries regulators didn't realize that the midwater boats would catch more than herring.

"The premise then," Fleming said, "was that they caught only negligible amounts of groundfish. Now we know they catch lots of groundfish."

Fleming said the bycatch of groundfish species appears to be a major problem. There have been "steady reports" of significant groundfish bycatch in data collected by National Marine Fisheries Service (NMFS) onboard observers although, Fleming said, there isn't enough data to provide a solid idea of how serious the bycatch problem is. There have also been a few of what Fleming described as "big events." In one documented case, a midwater trawler landed some 24,000 pounds of undersized juvenile haddock in a Midcoast harbor.

"It's pretty clear the original premise no longer holds true," Fleming said.

Midwater trawler fishermen acknowledge that their boats have some groundfish bycatch, but they contend that the problem isn't significant. In 2005, NMFS set a 1,000-pound-per-trip haddock bycatch limit, revising what had been a total ban. Since then there haven't been any reports of the trawlers having a significant bycatch, but Earthjustice believes that is largely the result of insufficient observer coverage on the boats.

The groundfish bycatch is a major issue for regulators, Fleming said. NMFS data shows that bycatch is generally underreported, primarily because of a lack of onboard observers. Last summer's NMFS fisheries stock assessment showed that the same 13 species of groundfish the management plan hopes to rebuild remain overfished. The groundfishermen say that isn't their fault and blame it on the midwater trawlers.

"They're hardly fishing at all, but the stocks aren't coming back," Fleming said, "so something is happening."

According to Fleming, keeping midwater trawlers out of the closed areas is as reasonable as it is necessary. When fisheries regulators sought to protect groundfish stocks they focused their efforts on "one gear type that had a lot of impact. Now it's a matter of fairness to deal with other gear."

Under the Magnuson-Stevens Fishery Conservation and Management Act, the commerce secretary has a "reasonable" period to respond to the fishermen's petition. The response could range from the emergency action the petition asks for — a ban on the midwater boats beginning Jan. 1 that could extend for up to 12 months — to a formal rule making process that includes a public comment period, to a request to the NEFMC to review the issue.

The problem with the last approach, Fleming said, is that the council is already working on a new amendment to the groundfish management plan, and that isn't scheduled to be ready until May 2009.

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