

Management by delay



By Anne Hayden and Philip Conkling

This summer, management crises in two of New England's most important fisheries, lobster and groundfish, have led to the postponement of significant new regulations.



For lobstermen, the delay is a reprieve, for groundfishermen the delay only heightens the uncertainty. But both cases illustrate the continuing inability of management to work at a timescale that matters to the fish — and the fishermen. Delay is the name of the game.

For lobstermen, NMFS is proposing to give them another six months to equip lobster traps with sinking groundlines to avoid entanglements with the endangered right whale. (Fishermen won't know until the end of August whether the sinking line delay will be implemented.)

The October 2008 deadline put fishermen between a rock and a hard place. Since it was unlikely that the rope industry could produce enough sinking groundline to supply the industry in time for the deadline, fishermen would

have been forced to fish singles, dramatically increasing the number of vertical lines in the water, increasing rather than decreasing the threat to right whales.

The delay also means authorities will be able to certify sinking groundline, a process that will give fishermen assurance that a significant investment in new rope will not be wasted on a non-compliant product. The delay will also allow more research to be done identifying the times and places that whales and fishermen are likely to co-occur; inshore exemption areas, where it is safe to use floating groundlines, can be fine-tuned.

Finally, and very importantly, the delay will shift the deadline away from the peak of the fishing season. Swapping out floating groundlines with sinking rope by October of this year would have hit fishermen just when they are making most of their money.

For groundfishermen, the regulatory delay is more complicated and its implications are less clear. This past month, the New England Fishery Management Council voted to postpone consideration of proposals that would have reduced days at sea by as much as 70 percent, as required to meet court ordered rebuilding time frames. The council has been known to avoid hard decisions in the past but, in this case, they are also between a rock and a hard place.

The regulatory process has resulted in a perfect storm of conflicting requirements. A revised management plan must be in effect for the beginning of the next fishing year (May 1, 2009); requirements for public comment and the development of an environmental impact statement backed the council's decision *required* a new plan *by* early June of this year.

But the catch-22 is that scientific analysis of stock status and recommended fishing mortality levels will not be available until later this year. The findings of the Groundfish Assessment Review Meeting will not be finalized until August (the GARM process was initiated in 2002 and is

conducted every three years). In this new version of "hurry up and wait," council members found themselves backed into a corner: Make a decision without the information needed for an informed vote or wait.

But it's even worse than that. This was only the most recent time the council had found itself facing a difficult choice: a year ago the council rejected area management as an alternative to days at sea because there wasn't enough time to come up with a plan. Earlier this year, it postponed implementation of sectors because — you guessed it — there wasn't enough time to make the plan work.

Fish have always been a moving target — and we now know that the dynamics of fish stocks are also always in flux. Unfortunately, our approach to management has not kept pace.

Our assumption that maximum sustainable yield, as codified in Magnuson-Stevens, is the basis of effective management has boxed us into a focus on numbers, MSY, F max, TAC, and so on, and virtually eliminated our ability to innovate our way out of the mess the New England council finds itself in. At a time when understanding the dynamics of fish stocks has become a moving target, our tools for doing so have become more and more cumbersome.

This time the council decided to put the ball back in NMFS' court. It postponed a decision until after the GARM review is completed; a new management plan will be in effect no sooner than September 2009. Now NMFS must decide if it will impose its own solution, sure to be unpopular with the industry, on the council or risk being sued.

Unfortunately, management by delay entails a high risk of an intervention by other players and further diminishes public confidence in the fisheries management process. **NF**

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