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JOHN H. LYNCH
Governor

OS EXECUTIVE SECRETARIAT

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February 27, 2008

The Honorable Carlos M. Gutierrez
United States Department of Commerce
1401 Constitution Avenue, N.W.
Washington, DC 20230

Dear Secretary Gutierrez:

I hereby seek a declaration of a fisheries resource disaster affecting the New Hampshire commercial fishing industry, based on sections 312 and 315 of the Magnuson Stevens Fishery Conservation and Management Act as amended by the Reauthorization Act of 2006.

Since 1994, Amendments 5, 7, and 13 to the Northeast Multispecies Fishery Management Plan have significantly reduced the area and the number of days that New Hampshire vessels are allowed to fish. Most recently, the fishery management plan's Framework Adjustment 42 (FW42), which became effective November 22, 2006, reduced the fishing days available to the inshore groundfishing fleet by an additional 50 percent by counting fishing time at a 2:1 ratio. The FW42 reduction has a significant impact on New Hampshire fishing vessels, most of which cannot move out of the 2 to 1 count area because of their smaller vessel sizes. These regulations threaten the survival of the majority of New Hampshire's fishing industry.

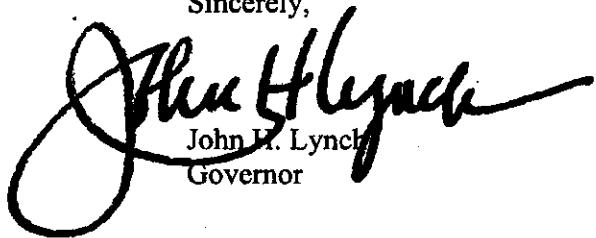
I know that the Department of Commerce recently denied disaster declaration requests from the states of Massachusetts, Rhode Island and Maine. It is my understanding that these requests were denied because the department determined a commercial fishery failure did not exist for these states, and that groundfish stocks were in fact rebuilding.

As you will note in the attached report, groundfish stocks for New Hampshire fisheries are now a great deal lower than they were at the time of the 1994 disaster declaration. The Department should also recognize that restrictions put in place in an effort to rebuild these stocks have a severe impact on our industry. If indeed groundfish stocks are now slowly rebuilding, it is because of the economic sacrifices made by New Hampshire and New England fishermen.

The Honorable Carlos M. Gutierrez
Page 2
February 27, 2008

I request that the Department of Commerce declare a fisheries resource disaster based on the record low level of groundfish stocks and the economic impact to our industry caused by the low stocks and federal restrictions. We should come together to support our fishermen and their families during this difficult time. I also believe we must continue to work together to improve federal regulations to ensure a regulatory environment that is fair and equitable while protecting our natural resources. Thank you for your consideration.

Sincerely,



A handwritten signature in black ink, appearing to read "John H. Lynch".

John H. Lynch
Governor

Attachment

cc: William Hogarth, National Marine Fisheries Service
Senator Judd Gregg
Senator John Sununu
Representative Carol Shea-Porter
Representative Paul Hodes
John Nelson, NH Fish and Game Marine Fisheries Division

**New Hampshire's Request for Federal Declaration of
a Groundfish Fishery Resource Disaster: *Economic
impact of federal fishery regulations on New Hampshire
groundfish fishery***

**Prepared By
New Hampshire Fish and Game Department Marine Fisheries**

December 2007

TABLE OF CONTENTS

	Page
ACKNOWLEDGEMENTS.....	i
EXECUTIVE SUMMARY.....	ii
KEY FACTS.....	iii
INTRODUCTION.....	1
OVERVIEW AND BACKGROUND.....	2/3
APPROACH.....	4
STOCK STATUS.....	5
RESULTS.....	6
CONCLUSIONS.....	7/8
Economic Impacts	
1994 Resource Disaster Declaration Parallel	
RECOMMENDATION.....	9
REFERENCES.....	10

EXECUTIVE SUMMARY

This report provides justification for the Governor's efforts to have the Secretary of Commerce (SOC) declare a New Hampshire "commercial fishery failure due to a fishery resource disaster" based on sections 312 and 315 of the Magnuson-Stevens Fishery Conservation and Management Act as amended by the Reauthorization Act of 2006.

The report uses information from federal documents developed during a 1994 disaster declaration, Amendments 3, 5 and 13 to Northeast Multispecies Fisheries Management Plans and their accompanying federal Environmental Impact Statements. Changes in groundfish revenue were examined during a year with implementation of the interim emergency action and with Framework 42 by comparing the same federally permitted vessels used in the Framework analysis with added criteria that vessels used Days-at-Sea (DAS) and landed in New Hampshire ports.

Results show 58% of New Hampshire vessel gross revenues declined in fishery year 07 versus fishing year 06. A further consequence was the closure of the Portsmouth Fishermen's Cooperative during 2007. The impact is consistent with Framework 42's projection of a substantial impact to the State of New Hampshire.

Our conclusion that a fishery resource disaster declaration is warranted also rests on similar current resource and fishery conditions to those witnessed in 1994 when the SOC declared a federal fishery resource disaster for the New England groundfish fishing industry. The SOC based his decision on a number of facts that are still pertinent today. For example, landings of New England groundfish declined from about 200,000 mt in 1980 to about 65,000 mt in 1993. In fishing year 06 groundfish landings region-wide were 32,300 mt. A second example is that yield of three of the most important groundfish species, cod, haddock, and yellowtail flounder, was only 26,000 mt in 1993 versus 15,500 mt in 2005. A third example is that the Secretary of Commerce concluded spawning stock biomass levels remained too low to provide for increased frequency of good year-classes. The situation is similar today.

Recommendations are to:

- continue to request that the federal government declare a fishery resource disaster;
- request that federal funds be allocated to New Hampshire to moderate impacts.

KEY FACTS

1. The Secretary of Commerce declared a "fishery resource disaster" affecting the New England fishing industry in 1994. Criteria were identified and used for determining that a disaster existed and would continue for years.
2. Overall resource conditions between 1994 and 2006 have not improved. For example:
 - a. N.E. groundfish landings were 65,000 mt in 1993 compared to 32,300 mt in the 2005/2006 fishing year – about 50% less than the amount justifying the earlier declaration.
 - b. In 1994, spawning stock biomass (SSB) levels of all major groundfish stocks were at or near record lows, and recruitment, especially since 1987, was poor. In 2006 SSB is still near record low levels for most of the major stocks. Recruitment generally remains low for these stocks.
3. Economic analyses in 1994 projected a five year dramatic loss in fleet groundfish revenues, profits, and job losses that would be especially harmful for many marginal businesses. Framework 42 projects the northeast region will suffer a decline in gross sales of \$52 million with the overall impact on the region's economy being about \$98 million. The New Hampshire seacoast is projected to lose \$5.1 million in gross sales.
4. Framework 42's Final Environmental Impact Statement (FEIS) establishes that impacts on revenues are not evenly distributed. In general, ports adjacent to differential DAS areas (Figure 1) that receive landings from

largest declines in groundfish revenues. Vessels with homeports in New Hampshire are expected to face 20-40% decline. Half of vessels dependent on the inshore Gulf of Maine (GOM) area are expected to lose 35% or more of total revenue.

5. The FEIS also states social impacts will not be evenly distributed. Figure 1 shows Framework 42's 2:1 differential counting area (shaded); the rectangular area within and adjacent to the 2:1 Days-at-Sea (DAS) area is a permanent closure. This 2:1 area just by itself represents an especially hard-hitting restriction, i.e., a 50% cut in allocated fishing days for all vessels incapable of escaping the 50%-cut zone.

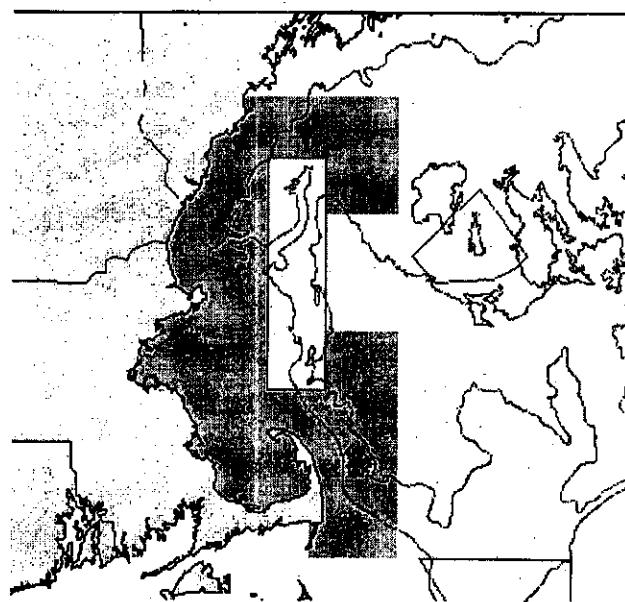


Figure 1. The blue area represents the inshore GOM, where federal regulations have enacted differential 2:1 DAS counting.

INTRODUCTION

Federal groundfish fishery regulations, especially area closures and other rules superimposed on those areas, combined with fishery resource conditions that have not responded to those regulations, continue to drive New Hampshire's groundfish industry towards total economic failure triggering catastrophic changes in coastal community profitability.

This report describes the nature of this current disaster and provides justification for the Governor's continued efforts to have the Secretary of Commerce (SOC) declare a New Hampshire "commercial fishery failure due to a fishery resource disaster" based on sections 312 and 315 of the Magnuson-Stevens Fishery Conservation and Management Act as amended by the Reauthorization Act of 2006. This report:

- 1) reviews past and current regulations affecting the groundfish fishery off New Hampshire in the inshore portion of the Gulf of Maine
- 2) describes reductions in revenues as a function of lower groundfish landings caused by most recent federal regulatory actions, i.e., Emergency Interim Action and Framework 42 to the Northeast Multispecies Fishery Management Plan;
- 3) reviews federal justification for the 1994 "Declaration of Disaster Affecting the New England Fishing Industry" and explains why the same justification is relevant to the Governor's current request for a declaration; and
- 4) supports the Governor's contention that disaster relief should be made available to "allow this historic and vital New Hampshire industry to survive this period of severe regulatory restriction."

In his October 10 letter to Secretary of Commerce Carlos M. Gutierrez, Governor Lynch indicated that he would submit documentation to substantiate this request for a disaster declaration. Furthermore, the Governor indicated that the latest reduction in fishing days available to the inshore groundfishing fleet disproportionately impacts New Hampshire vessels as compared to fleets elsewhere in the region and threatens the survival of this important segment of our commercial fishing industry.

An important Framework 42 conclusion bolsters the Governor's urgent request for a declaration: "Because most fishing trips in this fishery catch a wide range of species, it is impossible to design measures that will selectively change mortality for individual species. The management measures adopted by the amendment to reduce mortality where necessary are also expected to reduce fishing mortality unnecessarily on other, healthy stocks. As a result of these lower fishing mortality rates, yield from healthy stocks is sacrificed and the management plan may not provide optimum yield - the amount of fish that will provide the greatest overall benefit to the nation."

Also, Framework 42 regulations, and many of the Groundfish Plan regulations of Amendments 5, 7, and 13 (all since 1994), are specifically directed toward the inshore portion of the Gulf of Maine and New Hampshire specifically. For example, according to the Framework, nearly three-quarters of the inshore Gulf of Maine fleet relied on groundfish for most of their fishing income. The combination of factors, comparatively high dependence on groundfish, small vessel size, and geographic concentration in a relatively small number of home ports means that not only will these individual vessels have larger reductions in revenue, so too will communities within which they reside.

OVERVIEW AND BACKGROUND

Commercial fisheries are subject to complex and sometimes conflicting arrays of federal and state regulations. Regulatory complexity arises from: (1) federal-state jurisdictional boundaries; (2) private enterprise involving public resources; and (3) environmental protection issues. These conditions apply to the New England groundfish industry where a myriad of rules severely limit commercial fishermen's access to valuable fishery resources by closing areas to fishing and controlling the number of days that vessels can fish.

New England groundfish are managed as a complex of 15 species that include Atlantic cod, haddock, and flounders common to the GOM and Georges Bank. Commercial groundfish landings between 1986 and 2005 show a precipitous decline in the early-1990s (Figure 2), triggering a series of significant management actions beginning in 1994 with Amendment 5 and culminating in 2006 with Amendment 13.

Fishery closures, in the form of permanent closed areas have been used to control groundfish harvest since 1994. In 1998 federal regulators added a series of month-by-month area-based closures, "rolling" closures. Furthermore, a Days-At-Sea (DAS) Program, implemented in 1994, allocated a specific number of 24-hour fishing days per year to each federal multispecies fishing permit based on past fishing history of the permit. Since permits that received DAS allocations may or may not have been associated with active fishing ventures at the time allocations were made, significant excess days, or surplus fishing capacity (SFC), became an inherent flaw of the management plan; most fishing regulations have failed to prevent recoupment of SFC to offset effort reductions.

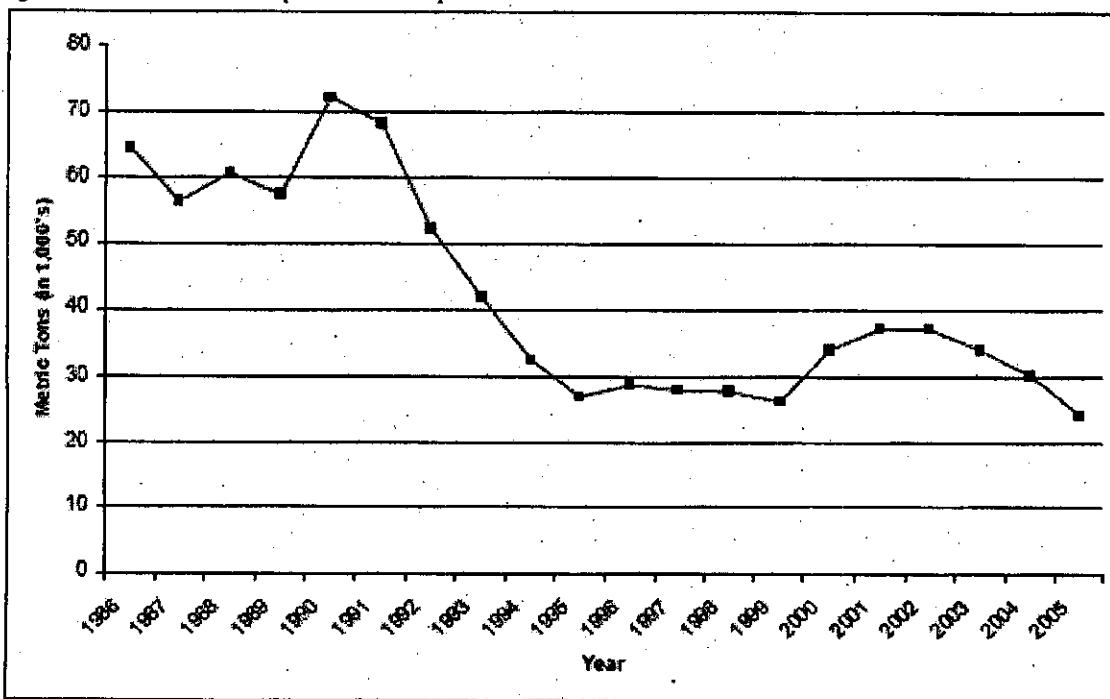


Figure 2. Commercial landings of three key groundfish species (cod, haddock, and yellowtail flounder) during 1986 to 2005.

Several attempts to ameliorate effects of SFC have occurred since 1994 that include federal permit "buy-out" programs and strategic regulatory actions, but SFC remains a critical factor in today's commercial fishery, particularly since current rules allow active fishing businesses to augment their DAS allocations by "leasing" inactive days or purchasing additional permits from other fishermen. Those who can afford to lease days and/or buy permits appear to have either stabilized their earnings above marginal rates or are making significant profits, depending on the volume of SFC consolidation and investment in fishing vessels. These conditions, however, apply to a minority of ventures, as most fishing businesses operating in the inshore Gulf of Maine groundfish fishery consist of a single boat with one federal permit, typically owned and operated by the boat captain who lacks sufficient capital to take advantage of DAS leasing. Under the current regulatory climate, this majority component of the fishery may not continue to exist without supplemental income from other fisheries or from other sources.

Since 1994, Congress has funded \$35-million for buyout programs resulting in removal of approximately 782 permits and 78 vessels from the Northeast groundfish fishery. While these programs focused on reducing effort in the Northeast groundfish fishery, specifics have varied, particularly with respect to the ability of permit holders to fish for other species following a buyout of their groundfish permits. Permit holders were required to surrender all federal permits and to scrap their vessel as part of the initial \$2-million pilot program that was administered during 1995-1996. Subsequent buyouts in 1997-1998 (\$22.5-million) and 2001-2002 (\$10-million) either allowed vessels to be transferred for a non-fishing use or did not remove vessels (i.e., just removed limited access groundfish permits).

Additionally, Congress provided \$11-million in economic assistance to the Northeast groundfish fishery as part of a 2002 Supplemental Appropriation Act. The Act allocated these funds to fishermen and fishing communities of New England affected by fishing restrictions and federal closures in the northeast groundfish fishery especially those mandated by a court order in April of 2002. The New Hampshire Fish and Game Department Marine Fisheries Division administered allocation of \$2.0 million distributed directly to qualifying fishermen affected by groundfish restrictions. Similar funds were granted to Maine (\$2.0 million), Massachusetts (\$5.5 million) and Rhode Island (\$1.5 million)

Amendment 16 is scheduled to be implemented in May 2009. The Amendment will make adjustments to reduce fishing mortality on stocks as required to stay on the rebuilding schedules. Additionally, reductions in fishing mortality may be required for those stocks with adaptive approaches and that are experiencing overfishing. The magnitude of reductions needed to meet Amendment 16 goals is unknown at this time, but further reductions are likely.

APPROACH

Information from federal documents and reports developed during a 1994 disaster declaration and commercial landings data from the Standard Atlantic Fisheries Information Systems (SAFIS) Dealer Reporting System, the National Marine Fisheries Service Vessel Trip Reports (VTR) and the federal at-sea observer program were used to evaluate and compare current trends in harvest and fishery performance. Information from the 2004 National Marine Fisheries Service (NMFS) Groundfish Assessment Review Meeting (GARM) was used to show trends in current resource conditions. To describe recent regulatory actions and impacts, both potential and realized, Amendments 3, 5 and 13 and Framework 42 to Northeast Multispecies Fisheries Management Plans (FMP) and their accompanying federal Environmental Impact Statements were used. The impact analysis from the Framework 42 environmental assessment quantified projected changes in both total revenues and revenues from groundfish for vessels with federal groundfish permits by comparing revenues from a baseline period (2001-2004) with projected revenues using a math programming model called the Closed Area Model (CAM) that assumes constant prices. The model attempts to quantify how changes in fishing behavior under new regulations will impact both fishing mortality rates and the revenues of vessels catching groundfish. The federal impact analysis predicts that, under Framework 42, vessels deemed highly dependent on the inshore Gulf of Maine (defined as vessels that spent at least 75% of their time fishing in that area) are likely to be disproportionately adversely impacted by the new regulations; three quarters of such vessels will lose 20% or more in gross revenues and greater than 37% in groundfish revenues. This report compares the fishing years (FY) of May 2005-April 2006 (pre-Framework 42) and May 2006-April 2007 (post-interim emergency action/Framework 42) to examine changes in groundfish revenue. The interim action was effective during May – November 21 and Framework 42 has been in place since November 22. Therefore this analysis shows the realized impacts of the interim emergency action and Framework 42 on the groundfish fishing fleet in New Hampshire - the fleet most likely to be adversely impacted by Framework 42 regulations. We examined landings from vessels which had landings in (FY) 2006 and (FY) 2007. All vessels landed in New Hampshire.

STOCK STATUS

Most groundfish stocks were last assessed for calendar year 2004 at the Groundfish Assessment Review Meeting (GARM) II (Mayo and Terceiro, 2005). Georges Bank yellowtail was assessed through 2005 at the Transboundary Resource Assessment Committee (Legault et al., 2005). Stock status is based on two criteria: whether a stock is overfished and whether overfishing is occurring.

Stock status is summarized in Figure 3. Of 19 stocks, seven were overfished with overfishing occurring, five were overfished, but overfishing was not occurring. Of the 13 stocks with formal rebuilding programs, seven were behind the Amendment 13 projected rebuilding schedule.

Although not considered in this report, stocks classified as "overfished" have thresholds and targets aggressively set at very high levels through Amendment 13 and are subject to revision according to Amendment 13 criteria. Some are based on historical high levels of biomass estimated from data acquired through federal spring and fall bottom trawl surveys. Others are based on abundance and distribution patterns the federal government assumes will be re-established providing environmental and other influences are not limiting.

Groundfish Stock Status - 2004

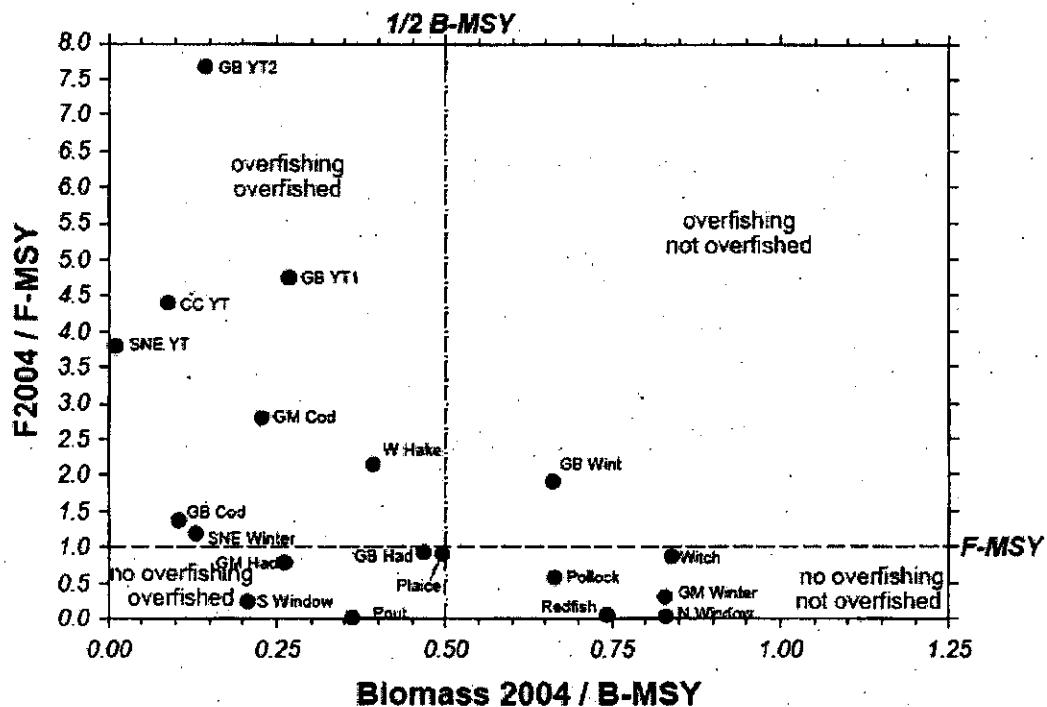


Figure 3. Stock status for 19 stocks in 2004. Taken from Figure 3.2 in Mayo and Terceiro, 2005. Note that the Georges Bank (GB) yellowtail assessment was updated through 2005. B/Bmsy ratio is ratio of current biomass to the biomass target. Stocks with biomass/Bmsy less than 1/2 are overfished (left of vertical dashed line). Stocks with fishing mortality rates/Fmsy greater than 1 have overfishing occurring (above horizontal dashed line).

RESULTS

Fifty-eight % of all federally-permitted vessels using a DAS and landing in a New Hampshire port had landing and gross revenue declines ranging from 15-91%, averaging 30%.

Framework 42 projects large declines in total revenue and groundfish revenue for vessels highly dependent on the inshore Gulf of Maine area. Our examination of the change in gross revenues during a year with implementation of Framework 42 appears consistent with the projected trends and general magnitude of the projected Framework 42 impacts.

CONCLUSIONS

Economic Impact

A decrease in gross revenues, averaging 30%, is evident for those vessels with dependence on the inshore GOM. The actual revenue declines are similar in magnitude to Framework 42's FEIS median projected losses of 20% and 46%, respectively, for those with dependence on inshore GOM. As a consequence of the reduced catches, the Portsmouth Fishermen's Cooperative went out of business in 2007. While some New Hampshire fishermen have succeeded in earning more revenue than projected under FW42 regulations, many have earned considerably less. The federal government's Framework 42 FEIS projections about loss of revenue and dire consequences for those fishing businesses and their associated New Hampshire communities are proving true and make a strong case for a disaster declaration request.

1994 Resource Disaster Declaration Parallel

There is a parallel with a previous federal disaster declaration for the New England groundfish fishing industry. A "fishery resource disaster" affecting the New England fishing industry was declared by the SOC on March 18, 1994. The Secretary based his decision on a number of facts he clearly stated in his declaration. We present below those facts that are still pertinent today. Following each fact, we explain why those criteria for determining a "fishery resource disaster" have been met today – 13 years after the 1994 declaration.

(1) *U.S. landings of New England groundfish resources had declined from about 200,000 mt in 1980 to about 65,000 mt in 1993 and were expected to be significantly lower in 1994.*

In fishing year 2006 (May 1, 2005 – April 2006) groundfish landings region-wide were 32,300 mt – far less than the amount used as a partial justification of the "declaration of disaster."

(2) *Yield of "three of the most important groundfish species, cod, haddock, and yellowtail flounder was only 26,000 mt in 1993 and was expected to decline to 17,000 mt in 1994".*

Consider that 15,500 mt of these three species were landed in fishing year 2005 – 9% less than the expected 1994 landings.

(3) *In 1994 it was determined that spawning stock biomasses of all major stocks was at or near record low levels, and recruitment, especially since 1987, had been poor.*

Spawning stock biomasses (SSB) described in Framework 42 are still near record low levels for most of the major stocks. Georges Bank cod shows little to no improvement. It is still near record low levels. Georges Bank yellowtail flounder SSB, although somewhat higher than mid-1990s abundance, has been at a plateau since 2000 and appears to be declining again. Southern New England yellowtail flounder SSB has been extremely low for the last 10 years and is almost identical to mid-1990s conditions. Cape Cod/Gulf of Maine yellowtail is in worse condition than the mid-1990s. Gulf of Maine cod is only somewhat better than when the 1994 disaster was declared.

With few exceptions, e.g., redfish and haddock, despite the many rules and regulations implemented by the federal government over the last 10 years, the groundfish resource has not rebuilt as expected and required. Furthermore, even though haddock, especially on Georges Bank appears to be in excellent condition, complicated overlapping federal rules prevent commercial fishermen from catching and landing what is allowed. In 1994 SSB was about 10,000 mt; now it's estimated to be 117,000 mt with most of that haddock being found in Canadian Georges Bank waters off limits to U.S. fishermen or in the so-called U.S./Canadian Management area in U.S. waters where access is restricted due to federal concern about U.S. catch of Georges Bank yellowtail flounder and cod. Furthermore, the very large 2003 year class of Georges Bank haddock is exhibiting slow growth rates due to density dependence, thus delaying recruitment to the fishery.

Contributing to our argument for a disaster declaration and failure of SSB to increase has been prolonged, poor juvenile recruitment for many groundfish stocks. For example, Georges Bank cod recruitment has been far below the median level since 1991. In 1994 recruitment was at its lowest level since the 1970s. In 2000, 2001, and 2002 recruitment was lower than in 1994. Recruitment was somewhat better in 2003 and 2004. Nevertheless, immediate prospects for significant improvement in SSB are dim.

(4) Present condition of the spawning stocks suggests that recruitment and therefore catches will not increase in the near future unless spawning stocks are rebuilt.

SSBs remain, for the most part, at levels too low to provide for increased frequency of good year classes. This is the identical point made by the SOC as part of his justification for declaration. Moreover, the SOC recognized "excessive fishing" as the primary cause for the decline in groundfish stocks, yet he acknowledged that other sources of mortality (natural) were important, especially when stock levels are low. We agree that excessive fishing is the primary cause, but we also agree with the SOC's 1994 conclusion that "...those variables that determine fluctuations in natural mortality are not fully known, especially at low stock levels.

(5) Amendment 5 to the Groundfish Plan, approved and implemented by the federal government, was expected to halt the decline over 5 years for major groundfish stocks. Economic analyses projected that fleet groundfish revenues would decline 11% per year for 5 years and profits would decline by 6% for 3 years. The SOC acknowledged "The situation will be disastrous for many marginal firms." Furthermore, NMFS concluded that a 50% reduction fishing effort would cause 20,000 jobs to be lost.

This revenue picture has worsened with implementation of Framework 42. The Framework very well describes the regional economic impacts, especially those that are not evenly distributed. According to the Framework's economic analyses, the northeast region will suffer a decline in gross sales of \$52 million with the overall impact on the region's economy estimated as \$98 million. The New Hampshire seacoast will lose \$5.1 million. Ports with the largest loss of groundfish revenue include Newington, Rye and Hampton/Seabrook (43%) and Portsmouth (19%).

One reason for this New Hampshire impact, according to the Framework, is that ports adjacent to the 2:1 differential DAS area in the Gulf of Maine that receive landings from the day-boat fleet will have the largest declines in groundfish revenues. An important reason for this loss are federal regulations; e.g., half the vessels that fish more than 75% of their time in the inshore Gulf of Maine will lose 20-40% of this total revenue.

Of particular interest to us, as acknowledged in the Framework, is economic as well as social impacts are larger than they need to be in some cases because Framework management measures will cause greater reductions in fishing mortality than are necessary for rebuilding.

This 1994 SOC declaration was accompanied by a White House press release indicating that the President recognized the threat to the livelihood of thousands of New Englanders. The President indicated that the first step to recovery was to restore the supply of fish, and to accomplish that purpose fishing had to be restricted while economic impact being felt by individuals, businesses, and communities had to be addressed.

New Hampshire has contributed towards needed restrictions on fishing through our involvement with the New England Fishery Management Council and through our own often more restrictive initiatives in state waters. As noted above, with some exceptions, SSB hasn't increased as required and recruitment for most groundfish is low and is not improving substantially. We suspect the next round of groundfish management and rule changes scheduled for May 2009, will be unfavorable to the remaining groundfish fishing fleet.

RECOMMENDATION

We believe that federal groundfish fishery regulations, especially area closures and other rules superimposed on those areas, combined with fishery resource conditions that have not responded to those regulations, will continue to drive the New Hampshire groundfish industry towards economic failure triggering dramatic changes in community profitability. Substantial federal funds over the past 15 years have been directed towards New England's groundfish communities specifically to address this situation. While federal assistance has helped, economic stability has never been achieved.

Since we expect resource conditions will not improve markedly overall in the near future and more stringent regulatory measures are likely forthcoming, we recommend that the Governor continue to request that the federal government declare a "commercial fishery failure due to a fishery resource disaster" and ask for federal funds to be allocated to the New Hampshire. Future assistance should be directed at preserving commercial fishing infrastructure and assisting individual fishermen.

REFERENCES

Amendment 13 Framework 42 FEIS <http://www.nefmc.org/nemulti/frame/frame_42.html> (cited on 7 March 2007).

Declaration of Disaster Affecting the New England Fishing Industry
<http://www.nmfs.noaa.gov/mb/financial_services/disaster.htm> (cited on 7 March 2007).

Mayo, R.K.; Terceiro, editors. 2005. Assessment of 19 Northeast groundfish stocks through 2004. 2005 Groundfish Assessment Review Meeting (2005 GARM), Northeast Fisheries Science Center, Woods Hole, Massachusetts, 15-19 August 2005. U.S. Dep. Commer., Northeast Fish. Sci. Cent. Ref. Doc 05-13; 499p. <<http://www.nefsc.noaa.gov/nefsc/publications/crd/crd0513>> (cited on 7 March 2007).