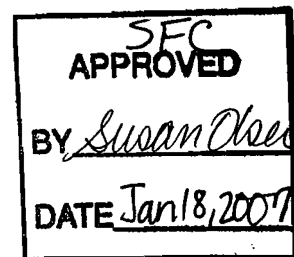


**US Department of Commerce
National Marine Fisheries Service
Management Division
State-Federal Relations Branch**



FINAL REPORT

State **New Hampshire**

Grant Number **NA03NMF4540012**

Project Title **New Hampshire Commercial Fisheries Emergency
Relief Program**

Period Cover **October 1, 2002 – June 30, 2006**

Project Dates **October 1, 2002 – June 30, 2006**

Approved by: **John Nelson
Chief Marine Fisheries**

Date **April 4, 2007**

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NH FISH & GAME

APR 05 REC'D

DIRECTOR'S OFFICE

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New Hampshire Commercial Fisheries Emergency Relief Program

Background

New Hampshire has for hundreds of years supported a vibrant and important fishing industry. New Hampshire is home to many involved in the fishing industry. In the year 2001, New Hampshire fishermen landed 17,379,653 pounds of finfish having a value of \$17,865,040. Of this catch, 6,113,863 pounds worth \$6,857,971 were groundfish.

On May 19, 2000, Plaintiffs Conservation Law Foundation (CLF), National Audubon Society (NAS), Natural Resources Defense Council (NRDC) and the Ocean Conservancy (collectively "Plaintiffs") brought suit against the United States Secretary of Commerce Donald Evans, the National Marine Fisheries Service (NMFS), and the National Oceanic and Atmospheric Administration (NOAA) (collectively "Defendants"), charging that Defendants failed to prevent overfishing and minimize bycatch along the New England coast. Specifically, Plaintiffs alleged that Defendants violated the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. § 1801 *et seq.*, as amended by the Sustainable Fisheries Act (SFA), Pub.L. No. 104-297, 110 Stat. 3559 (1996), and the Administrative Procedure Act (APA), 5 U.S.C. § 706.

On December 28, 2001, the Court granted Plaintiff's Motion for Summary Judgment. The Court determined that Defendants violated the Magnuson-Stevens Act, as amended by the SFA and the APA. Specifically, the Court found that Defendants violated the SFA and APA by failing to implement Amendment 9 of the Fishery Management Plan, thereby violating the overfishing, rebuilding, and bycatch provisions of the SFA.

Subsequent to the Court's summary judgment ruling, the parties commenced briefing the remedial phase of the case. The following parties intervened in these remedial proceedings: (1) Northeast Seafood Coalition; (2) Associated Fisheries of Maine, the Cities of Portland, Maine and New Bedford, Massachusetts, and the Trawlers Survival Fund; (3) the State of Maine; (4) the State of New Hampshire; (5) the State of Rhode Island; (6) the Commonwealth of Massachusetts; and (7) Paul Parker, Craig A. Pendelton, Northwest Atlantic Marine Alliance, Stonington Fisheries Alliance, Saco Bay Alliance, and Cape Cod Commercial Hook Fishermen's Association.

These parties reached a consensus on what is both necessary and achievable in the short-term and long-term to preserve and enhance the multispecies groundfish complex in New England. The Court concluded, after considerable review, that it was appropriate to use the Settlement Agreement as the remedy.

The regulations imposed by the court settlement agreement had substantial impact on the New Hampshire fishing community. Most vessels lost the ability to target groundfish during June due to area closures, while others lost a large percentage of days available for fishing (DAS). All incurred costs related to new gear requirements. Facilities servicing the harvesting sector also suffered. Reduced fish volume caused

financial strain on the fish cooperatives, which in some instances were not able to pay bills or had to postpone needed improvements.

Spending Plan

Public Law 1007-206 provided \$2,000,000 to the State of New Hampshire for economic assistance to fishermen and fishing communities affected by federal restrictions in the Northeast multispecies fishery.

As New Hampshire designated lead agency, the Fish and Game Department took several steps to assure that the proposed spending will be based on a fair and equitable criteria for establishing eligibility for the economic assistance. The Fish and Game Department developed a list of federally permitted vessels either landing in New Hampshire and/or principally ported in New Hampshire. The Department worked with the Governor's office and a small representative group of industry members to develop a comprehensive package which consisted of concepts with the necessary facts associated with items such as DAS, landings, facility needs, etc (Table 1). The plan was presented at a public meeting on October 9, 2002 at the Urban Forestry Center, Portsmouth, New Hampshire. The input from the public meeting provided the opportunity to gauge interest in the various approaches to financial compensation and determined how funds would be dispersed.

In the event an applicant wished to contest a Department's decision on individual compensation, the State set up a provision for appeals. The appeal process would entail a three-person panel from outside agencies reviewing the facts of each appeal and providing a final resolution as necessary (attached).

Administrative Costs and Process

The State was committed to delivering the fullest measure of relief possible to the New Hampshire commercial fishing community and therefore declined to retain any allocated funds for administrative or personnel costs. Principal point of contact for the Department was John Nelson, Chief of Marine Fisheries (603-868-1095).

On October 23, 2002, Governor Jeanne Shaheen and the Honorable Council approved the request by the Fish and Game Department to accept and expend two million dollars (\$2,000,000.00) in federal funds from the National Oceanic and Atmospheric Administration (NOAA) for the purpose of compensating commercial fishermen and providing assistance to the fishing community infrastructure.

New Hampshire plan compensated fishermen as follows:

A commercial fisherman had to meet all of the following three criteria:

- 1) New Hampshire resident or nonresident with a N.H. homeported vessel; and
- 2) Held New Hampshire, Maine, Massachusetts or Rhode Island commercial license in 2001 and as of October 1, 2002; and
- 3) Held federal permit in 2001 and 2002;

Table 1. Compensation Concepts

- I. Days at Sea (DAS)
 - a. DAS used in June 2001 minus DAS used in June 2002.
 - b. The difference between DAS used in their best year between 1996-2001 minus their allocation as of May 1, 2002.
 - c. The difference between their allocation as of May 1, 2001 minus their allocation as of May 1, 2002.
- II. Landings
The difference in value between landings of June 2001 minus landings of June 2002.
- III. Infrastructure Support
 - a. Cost of utilities, labor, fuel in June 2002.
 - b. Operational costs in excess of revenue year to date.
 - c. Payment for deferred upgrades or necessary repairs.
 - d. Payment of facilities' debt.
- IV. Industry Fees/Costs
 - a. Rebate of mooring, dockage, boat insurance, health insurance fees incurred for June 2002.
 - b. Cost of new gear purchased in 2002 to comply with regulations.
- V. Other
Proposed by public input.

AND one of the following:

- Group A – Had landings greater than 10,000 pounds in groundfish*, monkfish or dogfish in 2001 and landings of at least 1,000 pounds of the same as of October 1, 2002; or
- Group B. – Had landings of greater than 500 pounds of groundfish, monkfish or dogfish in any one year from 1994-2001; or
- Group C – Held open access permit with landings of at least 1,000 pounds of groundfish for June 2001.

**Groundfish is defined as cod, haddock, pollock, yellowtail, winter flounder, witch flounder, dabs and plaice.*

Application forms and explanation letters (see attached) were sent to commercial fishermen. Fishermen reviewed the category the Department had calculated for them, signed the letter, and returned it to the Department for processing.

After Department review and approval, checks were issued to the individuals.

Group A reimbursement resulted in \$1,258,556.00 being distributed to 62 individuals for an average compensation of \$20,299.29.

Group B (15 individuals) had a flat rate compensation of \$7,500.00 per individual for a total of \$112,500.00.

Group C (6 individuals) received a total of \$12,225.00 for an average compensation of \$2,037.50.

No appeals occurred with any grouping.

Infrastructure Support

The remaining funds were used to assist the Portsmouth Coop and the Yankee Coop with equipment purchases, maintenance and other upgrades.

Portsmouth Coop received \$301,589.79 to make repairs (\$25,541), upgrade the electrical system (\$21,589.79), replace aging vehicles and forklifts (\$58,895), install a new cooler (\$83,946), purchase a new ice machine (\$21,950), cover operational costs (\$9,668) and rental costs (\$80,000).

Yankee Coop received \$315,812.00 for infrastructure support. Most (\$285,000.00) of the funds went to replacing a seawall which was collapsing. Fuel tank replacement costs \$20,812.00 and \$10,000.00 was used to cover the tanks and repave the area.

Summary

The Emergency Relief Funds of nearly \$1.4 million were distributed to 83 individuals and over \$617,000 to the Portsmouth and Yankee Coops. Individuals received their distribution during 2002. Final distribution to the Coops occurred in 2006.

CHAPTER 200 HEARINGS AND CLAIMS FOR FISHERIES DISASTER RELIEF

PART 201 DEFINITIONS

201.01 "Administrator" means the division director of the Maine Resources or his designee.

201.02 "Executive Director" means the executive director of the Fish and Game Department.

201.03 "De novo hearing" means a new hearing which is not bound by the findings and rulings of a previous hearing before the administrator and which allows the parties to introduce new evidence or evidence not considered by the administrator at such a hearing, subject to the provisions of 206.07(a).

201.04 "Ex parte communication" means the transmittal of evidence or statements concerning the merits of a contested case to or from an administrator without notice to all parties to the proceeding and not done in their presence.

201.05 "Panel" means the panel of the appeals board consisting of the Executive Director and three other disinterested persons outside of the Fish and Game Department designated by him after consultation with the Office of the Governor.

PART 202 POLICY AND PURPOSE

202.01 Purpose of these Rules. The following rules are to assist interested parties in understanding and conforming to hearings procedures established to promote and assure the conduct of a full, fair and adequate exposition of issues and the expeditious resolution of disputes. These rules are to be construed to secure the just, speedy and inexpensive determination of every proceeding.

202.02 Purpose of Hearing. The purpose of any proceeding governed by this chapter is to permit the department to acquire sufficient information to make a reasoned decision and to afford persons who may be affected by a decision the opportunity to present evidence and statements prior to the making of that decision.

PART 203 GENERAL RULES OF PRACTICE

203.01 Applicability. Rules in the part apply to hearings before the administrator and appeals to the appeals board.

203.02 Ex Parte Communication.

(a) Except where the department is authorized by law or the rules of the department to dispose of a matter on an ex parte basis, no person shall make an ex

parte communication to any officer or employee of the department, or member of the appeals board, who is, or may reasonably be expected to be, involved in the decisional process in a contested case governed by this chapter. No officer or employee of the department or member of the appeals board, who is, or who may reasonably be expected to be, involved in the decisional process in any contested case governed by this chapter shall make or receive an ex parte communication. This rule shall not prohibit communication between the administrator, the panel and the attorney general's office.

(b) Once the administrator or panel of the appeals board has been assigned to adjudicate a contested matter or dispute, there shall be no direct communication between the parties or their counsel and the administrator or panel members other than in writing and with copies to all parties or their counsel and the administrator or panel members other than in writing and with copies to all parties of record or by telephonic conference call with all parties. The receipt by the department of an ex parte communication regarding a pending claim or proceeding shall require immediate dissemination of such communication by the recipient thereof; provided that any inquiry regarding the status of the proceeding shall not be prohibited.

203.03 Notice of Appearance. All attorneys shall, upon being retained by a client in a matter pending before the appeals board, file with the appeals board, a letter of appearance, copies of which shall be provided to the attorney general's office.

203.04 Failure to Appear. A hearing may proceed in the absence of any party who, after due notice of hearing, fails to be present or fails to obtain a continuance. The hearing will begin 15 minutes after the scheduled start time if a party to the hearing has not arrived and has not contacted the administrator as to the reason for being late. If a hearing concludes before the non-appearing party arrives, the non-appearing party shall not be allowed to submit testimony or evidence in the matter. The administrator or panel shall require that the party present submit such evidence as the administrator or panel deems necessary in order to make a ruling or decision.

203.05 Continuances.

(a) If a continuance is necessary, requests to continue a hearing shall:

(1) Be given in writing to all parties to the hearing, including the administrator, at least 2 business days prior to the scheduled hearing;

(2) State the specific reason for the request;

(b) Upon the filing of the request for a continuance, as per 203.05(a), the executive director shall review the pleading and determine if a compelling need exists to grant the continuance.

PART 204 CONDUCT OF HEARINGS BEFORE ADMINISTRATOR

204.01 Requesting a Hearing. A claimant for fisheries disaster relief may petition the executive director in writing for a hearing. The petition shall state the reason for the hearing and a copy shall be sent to the attorney general with the supporting documentation. The petition shall be filed with the department's office in Durham.

204.02 Notice of Hearing.

- (a) The executive director may schedule a hearing in Concord or Durham.
- (b) Notice of the date, time and location of the hearing shall be provided at least 14 calendar days prior to the hearing and shall be sent to the claimant.
- (c) In lieu of mail, notice may be given in hand.
- (d) The hearing will be held no later than 45 days from the date of the request.

204.03 Specification of Issue. Hearings before the administrator shall be scheduled for the determination of the claim. The administrator shall determine, in his sole discretion, all issues concerning the conduct of the hearing and the need for testimony by witnesses.

204.04 Conduct of Hearing.

(a) A sound recording of the hearing shall be made by the administrator and the record shall be maintained by the department for a period of 3 years following the order or ruling by the administrator on the issues presented. Any party requesting a copy of the sound recording shall be granted access to it at reasonable times during business hours for copying purposes at any time after the hearing decision is mailed. If transcriptions are made of hearing testimony and used for any purpose in any proceeding, a copy of such transcription shall be furnished to all parties of record. Copies of hearing tapes may be requested in writing, with payment enclosed with the request, from the department for a reasonable fee to cover the cost of the tape and processing fee, postpaid. Any party may have a stenographer present at a hearing provided that that party bears the cost of the stenographer.

(b) The administrator shall at the outset of the hearing record the place, date and issues of the hearing together with the names of those parties making appearances.

(c) Testimony of witnesses shall begin by the administration of oaths or affirmations by the administrator.

(d) The administrator shall regulate the course of the hearing and shall accept offers of proof together with all relevant evidence. The administrator shall conduct

the hearing in such a manner as to best ascertain the rights of the parties and shall not be bound by common law or other rules of evidence or by rules of procedure other than as set forth herein. Any probative and relevant evidence shall be received by the administrator during the course of the hearing. However, the administrator shall exclude evidence on the basis that it is irrelevant, immaterial or unduly repetitious.

(e) Each party shall have the right to present a brief statement of his or her position immediately prior to the close of the hearing. If the administrator finds it necessary for additional submission of memoranda, such submission shall be made within the time frame allowed by the administrator.

(f) A determination shall be made by the administrator on the basis of evidence presented at the hearing and the administrator shall not consider ex parte information, regardless of its source. If the submission of additional documentation is required or allowed by the administrator, copies of all such documents shall be provided within the time frame allowed by the administrator with copies to all opposing parties. The non-producing parties shall be afforded 10 calendar days to object to and comment upon such submission prior to the issuance of any order or ruling by the department. The order or ruling of the administrator shall be based upon reliable, probative and substantial evidence.

204.05 Issuance of a Decision. The administrator shall render a ruling or decision within 10 days after the conclusion of the hearing. The administrator may render a decision during or at the close of the hearing if the decision is apparent to the administrator. The decision shall include a brief explanation of its factual and legal basis. A copy of the decision shall be furnished to each of the parties and attorney(s) of record. Such decision shall be final unless an appeal is taken to the appeals board.

204.06 Reconsideration.

(a) Within 10 calendar days of the issuance of the administrator's decision, any party to the decision may request reconsideration or clarification of the decision. Any request for reconsideration or clarification shall be in writing, addressed to the administrator with a copy to the attorney general, and the executive director. The request shall specify the grounds on which the requesting party is seeking reconsideration or the specific issue(s) in the decision for which clarification is being sought.

(b) Reconsideration or clarification shall be granted only in those instances where there is clearly a mistake or clarification is manifestly needed to avoid injustice.

(c) The filing of such a request shall not suspend any portion of the decision or the 10-day period for filing an appeal to the appeals board.

PART 205 APPEALS TO THE APPEALS BOARD

205.01 Appeal. Any party aggrieved by a decision of the administrator regarding a fisheries disaster relief claim may appeal the same to the appeals board. An appeal shall be taken in writing with copies sent to all parties and the attorney general and shall be filed with the appeals board no later than 10 calendar days from the date of the decision.

205.02 Ex Parte Communication. No claimant's representative, attorney, or any representative of any party shall send anything in writing to the appeals board or any of its personnel concerning a case before the appeals board without simultaneously sending a complete copy with enclosures to the Attorney General and any other party of record. Copies of all written communication from the appeals board shall be transmitted simultaneously to all parties and shall indicate the parties copied.

205.03 Procedures prior to the Appeal Hearing.

- (a) Upon the receipt of an appeal request, the executive director shall send an acknowledgment to all parties, including notice of the date and time of the hearing which shall be provided at least 14 calendar days prior to the appeal hearing.
- (b) Any correspondence, pleading, or evidence submitted for an appeal proceeding, including the appeal request, shall be in quadruple.

205.04 Conduct of Hearing.

- (a) Unless otherwise agreed, the appealing party shall be responsible for compiling all documentary evidence to be considered by the appeals board. This compilation shall be indexed, tabbed and paginated. The final compilation shall be submitted, in quadruple, to the appeals board and opposing party no less than 5 calendar days prior to the hearing.
- (b) Unless waived by the parties, a sound recording of the hearing shall be made by the panel and the recording shall be maintained by the appeals board for a period of 3 years following the order or ruling of the panel on the issues presented. Copies of tapes are available for a fee to cover the cost of the tape and staff time. If transcriptions are made of hearing testimony and used for any purpose in any proceeding, a copy of such transcription shall be furnished to all parties of record. Any party may have a stenographer present at a hearing, provided that such party bears the cost.
- (c) At the request of a party, the panel shall order witnesses other than the claimant and the administrator, to be excluded from the hearing room so that they cannot hear the testimony of other witnesses.

(d) Testimony of witnesses shall begin with the administration of oaths or affirmations. The chair shall at the outset of the hearing, record the place, time, date and issues of the hearing together with the names of those parties making an appearance.

(e) The chair is charged with regulating the course of the hearing and may accept offers of proof together with all relevant evidence. The chair shall conduct the hearing in such a manner as to best ascertain the rights of the parties. The chair shall rule on all matters of evidence and procedure relative to the conduct of the hearing. The panel, through the chair, shall not be bound by formal rules of evidence or procedure. Any probative and relevant evidence may be received by the chair during the course of the hearing. The panel, through the chair, may exclude evidence on the basis that it is irrelevant, immaterial or any other basis that the chair in its discretion may determine.

(f) Each party shall have the opportunity to present a closing statement at the conclusion of the hearing. The administrator shall make such closing statement first. In the event that the hearing has exceeded its allotted time, the panel may permit written closing statements, not in excess of 2 typewritten pages to be submitted in quadruple within 3 calendar days of the hearing date.

(j) A determination shall be made by the panel on the basis of evidence presented at the hearing. If the submission of additional documents is required or allowed by the chair, copies of all such documents shall be provided within 10 calendar days of the hearing, with copies to all opposing parties. The non-producing parties shall be afforded 10 calendar days to object and comment upon such submission prior to the issuance of any order or ruling by the panel.

205.05 Decision of the Panel.

(a) The panel shall render a written ruling or decision within 30 calendar days of the date of the completion of the hearing. The panel may render an oral decision during or at the conclusion of the hearing. A decision of the panel shall require 3 like votes. A decision of the panel is final and conclusive.

«Name»

«Address»

«City», «State» «Zip_Code»

Dear Mr. «Lname»,

Attached is an application for New Hampshire Emergency Relief program. The program provides for compensation to qualified multispecies permittees and qualified open access permittees as well as for infrastructure support. Landings information for all groups will rely primarily on federal landings records.

Multispecies permittees are divided into two groups (A&B). Group A is compensated for Days at Sea (DAS) lost (2001 base allocation minus 2002 base allocation) if they have landed more than 10,000 pounds of groundfish, monkfish or dogfish during 2001. Vessels must also have groundfish, monkfish or dogfish landings of at least 1,000 pounds between May 1, 2002 and October 1, 2002. Compensation will not be more than the value of said landings for 2001. Groundfish are defined as cod, haddock, yellowtail, winter, witch flounder, dabs and plaice.

Group B are compensated for holding a multispecies permit. They must have landings of groundfish, monkfish or dogfish greater than 500 pounds in any one year 1994-2001.

Open access permits (Group C) will be compensated for groundfish landings lost due to the June 2002 closure (June 2001 landings minus June 2002 landings) if they landed at least 1,000 pounds of groundfish during June 2001.

Our records indicate you may qualify for Group B with groundfish, monkfish or dogfish landings of «Landings» pounds for the period «Year». If you meet the other requirements specified on the application and if you concur with the landings, simply fill out the attached application and send to Marine Fisheries with the necessary license/permit information. If you do not concur you must notify us immediately and provide verifiable documentation of federal landings by December 14, 2002.

You may apply for compensation in only one state. The states will share lists of who are eligible for compensation by each state.

If you have any questions, please contact Marine Fisheries at 868-1095

Sincerely,

John I. Nelson
Chief Marine Fisheries



ECONOMIC ASSISTANCE APPLICATION AND CERTIFICATION

- This form must be filled out **completely** to be considered for economic assistance.
- A separate application must be filed for each Federal Multispecies Permit.
- **MUST BE POSTMARKED NO LATER THAN DECEMBER 14, 2002.**
- Submit by mail to: NH Marine Division, Emergency Relief Fund Program, 225 Main St., Durham, NH 03824

Requirements:
- Massachusetts Federal Multispecies Permit (2001 and 2002)
- Federal Registration of Vessel (State Multispecies Permit)
- Corporation State Registration
- Owner (if not MA, ME, NH, RI, CT, or RI) commercial license in 2001 and as of October 1, 2002

Individual Information: (PLEASE PRINT)

Name: _____
Last Middle First Date of Birth

Corporate Name (if any) _____ SS# or Federal Tax ID# _____

Address: _____
Street Address Mailing Address
City State Zip Code Home Phone Work Phone

Vessel/License Information:

Vessel Name _____ State Registration # _____
Federal Permit # _____

2002 Commercial Saltwater License# _____
and/or
2002 Wholesale Marine Species License# _____



Attach photocopy of license(s)

of Days-at-Sea allocated in 2002 _____



Attach photocopy of documentation letter from NMFS

(Additional documentation maybe be required after review)

Applicant Certification: It is understood that the information shown herein and on any attached sheets or submitted hereafter will be used to determine my eligibility for emergency fishery disaster assistance and I certify, subject to penalties provided by law, including any civil or criminal fraud penalties, that such information is true, correct and complete to the best of my knowledge and belief and can be supported with documented records. I further certify that I have not and will not apply for compensation for any loss described herein from any other source, including another State.

Name: _____
Typed or Printed legal name of authorized individual

Signature of person legally authorized to represent the entity submitting this application _____ Date _____

For Department Use Only	Comments	Conditionally Approved
Date received	Date received	Date received
Date reviewed	Date reviewed	Date reviewed
Denial	Denial	Denial