

June 10, 2003

Via Regular Mail & Facsimile

Ms. Patricia A. Kurkel
Regional Administrator
National Marine Fisheries Service
One Blackburn Drive
Gloucester, MA 01930
Facsimile: (978) 281-9135

Re: Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies

Dear Ms. Kurkel:

The Office of Advocacy of the U.S. Small Business Administration (SBA) was created in 1976 to represent the views and interests of small business in Federal policy making activities.¹ The Office of Advocacy (Advocacy) monitors and reports on agencies' compliance with the Regulatory Flexibility Act of 1980 (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).² These laws require Federal agencies to assess the impact of their policies and rulemakings on small entities. On August 13, 2002, President Bush signed Executive Order (EO) 13272, which requires agencies to improve their compliance with the RFA and to engage Advocacy earlier in the rulemaking process. Because the Office of Advocacy is an independent office within SBA, the views of the Chief Counsel do not necessarily represent the views of the SBA or the Administration.

On April 24, 2003, the National Marine Fisheries Service (NMFS) published a proposed emergency rule on the Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery. The purpose of the proposal is to implement measures to reduce overfishing on species managed under the Northeast Multispecies Fishery Management Plan. In general, the proposal continues measures specified in the Settlement Agreement Among Certain Parties pursuant to an order

¹ Pub. L. No. 94-305 (codified as amended at 15 U.S.C. §§634a-g, 637).

² Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. § 601 et seq.) amended by Subtitle II of the Contract with America Advancement Act, Pub. L. No. 104-121, 110 Stat. 857 (1996). 5 U.S.C. § 612(a).

from the U.S. District Court for the District of Columbia. In addition to extending the settlement agreement, NMFS is also proposing to implement a program to allow permit holders to lease days at sea (DAS) from one multispecies vessel to another for no more than one fishing year. NMFS asserts that implementing the proposal on an emergency basis is necessary to provide the fishing industry with an opportunity to mitigate the potential economic harm caused by the continuation of the restrictive measures while maintaining conservation neutrality. Under the proposal, the Regional Administrator would retain the authority to terminate acceptance of new applicants to the program if fishing mortality or economic opportunity would be seriously undermined by allowing the continuance of leasing DAS.

The Office of Advocacy appreciates the fact that NMFS is considering the emergency DAS leasing program as a means of mitigating the economic burden that small businesses may be encountering due to the restrictions imposed by the settlement agreement. However, Advocacy understands that this is a contentious issue that has divided the fishing community. Advocacy encourages NMFS to give full consideration to the comments of all members of the small business community prior to making a final determination on whether to implement the proposed emergency DAS leasing program. If the proposed emergency rule is adopted on a temporary basis, prior to implementing a DAS leasing program on a non-emergency basis, Advocacy encourages NMFS to perform extensive small business outreach to ensure that small businesses have an opportunity to participate in the process.

Pursuant to Executive Order 13272, Advocacy is available to review the fishery management plan as it is being drafted and to assist in outreach to assure that small business concerns and proposed alternatives are considered. In addition to having attorneys and economists in Washington, DC, Advocacy has a regional advocate in the New England area who is based in Boston. If you have any questions, please contact Jennifer Smith, Assistant Chief Counsel for Economic Regulation, at (202) 205-6943 or Barbara Manning, Regional Advocate, at (617) 565-8418. Thank you for the opportunity to comment on this important proposal.

Sincerely,

Thomas M. Sullivan
Chief Counsel for Advocacy

Jennifer A. Smith
Assistant Chief Counsel
for Economic Regulation
& Banking

Cc: Dr. John D. Graham, Administrator, Office of Information and Regulatory Affairs

