

May 17, 2002

VIA REGULAR MAIL &
FACSIMILE

The Honorable John F. Kerry
Chairman, Subcommittee on Oceans, Atmosphere and Fisheries
Committee on Commerce, Science, and Transportation
United States Senate
Washington, DC 20510-6136
Facsimile: (202) 228-2339

Re: Statement for the Record
May 9, 2002 Hearing on the National Marine Fisheries Service (NMFS)

Dear Chairman Kerry:

On May 9, 2002, the Senate Subcommittee on Oceans, Atmosphere and Fisheries held an oversight hearing on the National Marine Fisheries Service (NMFS) Management Issues. The hearing focused on the current state of fishery and protected resource management in the United States. The steps that need to be taken to rescue it from its current state of crisis were also discussed at the hearing.

As Chief Counsel of Advocacy, I am charged with monitoring Federal agencies' compliance with the Regulatory Flexibility Act (RFA)¹, as amended by the Small Business Regulatory Enforcement Act of 1996 (SBREFA).² I appreciate the opportunity to comment for the record on your hearing. Please note that, as an independent office, these views reflect the Office of Advocacy's position and do not necessarily reflect the views of the Administration or the U.S. Small Business Administration.

The viability of the fishing industry and the activities of NMFS are a great concern to Advocacy. As Dr. William Hogarth, Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA), stated in his testimony, regulations issued by NOAA Fisheries affect not just marine resources but also people, businesses, and communities associated with the resources. Advocacy's statistics indicate that 99 percent of commercial fishing businesses are small.³ Many of these small businesses

¹ 5 U.S.C. § 601 et seq.

² Public Law 104-121, 110 Stat. 857 (codified at 5 U.S.C. § 601 et seq.)

³ Employer Firms and Employment by Employment Size by North American Industry Classification System Code. United States Census Bureau, Department of Commerce, prepared under contract by the Office of Advocacy, Small Business Administration, Washington, DC, 1999.

operate out of small communities. Those small businesses and communities are directly impacted by NMFS activities.

In the past, Advocacy has met with members of the fishing industry to discuss their concerns. One of the issues raised by the fishing industry during those discussions is NMFS's failure to use the best available science in formulating regulations. Dr. Hogarth articulated this same concern at the hearing. Specifically, he testified that "the agency's science is sometimes hampered by the lack of adequate data."⁴

Advocacy submits that NMFS's lack of adequate data may have a negative impact on small entities associated with the fishing industry. Without adequate data, NMFS cannot determine the appropriate course of action for protecting the species and the fishing industry. Proper science will produce a better foundation for action and aid NMFS in performing a more accurate economic analysis for its compliance with the RFA.⁵ The proper science may also assist NMFS in developing and implementing less burdensome regulatory measures that may be beneficial to the fishing industry.

Several other concepts were discussed at the hearing that may also be helpful to small entities. Advocacy supports not only the implementation of legislation which will assist NMFS in obtaining and using the reliable science, but also other concepts that may assist in rescuing the fishing industry from its current state of crisis.

If you have any questions about this matter, please feel free to contact me at (202) 205-6533. Thank you.

Sincerely,

Thomas M. Sullivan
Chief Counsel for Advocacy

Jennifer A. Smith
Assistant Chief Counsel
for Economic Regulation

⁴ *Testimony of Dr. William T. Hogarth, Assistant Administrator for Fisheries before the Subcommittee on Oceans, Atmosphere and Fisheries, Commerce, Science and Transportation Committee, U.S. Senate, Washington, DC, May 9, 2002, pages 5-6.*

⁵ Ray Kammer, consultant to the panel of the National Academy of Public Administration that is reviewing NMFS under a charge from the House and Senate Appropriations Committees, identified the RFA as being one of seven major laws that have a significant impact on NMFS operations. *Testimony before the Senate Committee on Commerce, Science and Transportation, Subcommittee on Oceans, Atmosphere and Fisheries by Ray Kammer, May 8, 2002, pages 3-4.*