

November 3, 2003

Via Facsimile (978) 465-3116

Mr. Frank Blount, Chairman  
Executive Committee  
New England Fishery Management Council  
50 Water Street, Mill 2  
Newburyport, MA 01950

Re: Amendment 13 to the New England Groundfish Fishery Management Plan

Dear Chairman Blount:

Tomorrow the New England Fishery Management Council (the "Council") will consider Amendment 13 to the New England Groundfish Fishery Management Plan. The Office of Advocacy is concerned that Amendment 13 could cause significant economic harm to small entities in the affected fishing industry. Advocacy is communicating its concerns to the National Marine Fisheries Service (NMFS) as well, in anticipation of the development of a proposed rule following the Council's actions. Because the Office of Advocacy is an independent office within the U.S. Small Business Administration (SBA), the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

The U.S. Congress established the Office of Advocacy ("Advocacy") under Pub. L. No. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is also responsible for monitoring agency compliance with the Regulatory Flexibility Act of 1980 ("RFA"), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").<sup>1</sup> Under the RFA, NMFS is required to determine the economic impact on small entities of its rulemaking on Amendment 13 and consider significant regulatory alternatives that achieve the agency's objectives while minimizing the burden on small entities. The NMFS has a history of engaging Advocacy early in its rule development process to solicit our assistance and expertise with their RFA compliance. This practice is consistent with Executive Order 13272, which was signed by President Bush in August 2002 and directs Federal agencies to implement policies protecting small entities when writing new rules and regulations.<sup>2</sup>

The Office of Advocacy recognizes the Council's responsibility to craft Amendment 13 to fulfill conservation objectives while ensuring the sustainability of the fishing industry. Advocacy's concerns focus on the potential impact of Amendment 13 on small businesses in the New England groundfish fishing industry. Representatives of the affected industry and individual small business owners informed Advocacy of their concerns about Amendment 13 in September 2002. At that time, the small businesses expressed concerns about the potential inaccuracy of the stock assessment as well as the potential impact that Amendment 13 could have on the New

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<sup>1</sup> Pub. L. No. 96-354, 94 Stat. 1164(1981), (codified as amended at 5 U.S.C. §§ 601-612).

<sup>2</sup> Exec. Order No. 13,272 § 1, 67 Fed. Reg. 53,461 (Aug. 13, 2002).

England groundfish fishing industry. Shortly thereafter, Advocacy submitted a letter to the New England Fishery Management Council regarding the stock assessment and requested that the Council not consider Amendment 13 until an independent assessment of the stock could be completed. The Council complied with Advocacy's request. Since then, Advocacy has met with several representatives of the fishing industry in Washington and New England to discuss the impact that Amendment 13 could have on the fishing industry and the fishing communities. Although the industry may not agree on the best course of action, they agree that the situation is dire.

On October 23, 2003, Advocacy met with NMFS to discuss the small entity impacts, and to offer encouragement to NMFS and the Council to continue working with the fishing industry to develop less burdensome alternatives. Advocacy is hopeful that the Council's discussions with the affected industry will result in less burdensome alternatives being included in Amendment 13. We encourage the Council to adopt a fishery management plan that promotes maximum flexibility and fully considers the concerns and suggestions of the fishing industry. Such an approach should ensure that Amendment 13 will not be overly burdensome to the affected small entities. Advocacy also encourages the Council to make their assessment of the industry alternative, currently under review, available to the public as soon as possible.

In addition, Advocacy urges the Council to ensure the transparency and comprehensiveness of the economic analysis for Amendment 13. A comprehensive economic analysis will provide valuable information to assist NMFS in meeting its obligations under the RFA and Executive Order 13272 in a timely manner.

If you have any questions or concerns, please feel free to contact me or Jennifer Smith of my staff at (202) 205-6943. Thank you for your consideration.

Sincerely,

Thomas M. Sullivan  
Chief Counsel for Advocacy

Barbara Manning  
Regional Advocate  
Region I

Jennifer A. Smith  
Assistant Chief Counsel  
For Economic Regulation

Attachment

Cc: Dr. William Hogarth, Assistant Administrator for Fisheries,  
National Oceanic and Atmospheric Administration  
Dr. John D. Graham, Administrator, Office Information and Regulatory Affairs  
Michael Barrera, National Ombudsman, SBA