

October 30, 2009

Alan Risenhoover
Director
Office of Sustainable Fisheries
National Marine Fisheries Service
1315 East-West Highway
SSMC3
Silver Spring, MD 20910

Re: RIN 0648-AW18 Magnuson-Stevens Fishery Conservation and Management Act;
Regional Fishery Management Councils; Operations

Dear Mr. Risenhoover:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits this comment on the Department of Commerce, National Marine Fisheries Services' (NMFS) proposed rule on the *Magnuson-Stevens Fishery Conservation and Management Act; Regional Fishery Management Councils; Operations*. While Advocacy believes that many of the initiatives will benefit small entities, Advocacy contends that there are some areas of the proposal that could be improved upon.

The Office of Advocacy

Congress established the Office of Advocacy to represent the views of small business before Federal agencies whose policies and activities may affect small businesses.¹ Advocacy is an independent office within the Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or of the Administration. The Office of Advocacy also monitors agency compliance with the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act.²

¹ See, 15 U.S.C. § 634c (4).

² Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612) 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).

The Proposed Rule

On March 27, 2009, the NMFS published a proposed rule on Magnuson Stevens Fishery Conservation and Management Act; Regional Fishery Management Councils; Operations in the Federal Register.³ The proposed rule addresses the administration and operations of the regional fishery management councils. In addition, the proposal would make changes to the regulations requiring Councils to provide procedures for proposed regulations, clarifying restrictions on lobbying, and clarifying timing in the Council nomination process.

Advocacy commends NMFS for proposing a rule that will increase transparency of the process. Increasing transparency may lead to greater small business participation and consideration of additional less burdensome alternatives when the agency promulgates future regulations. This type of regulation structure is contemplated by the RFA.⁴ Since the vast majority of the entities regulated by NMFS are small, and small entities are disproportionately burdened by federal regulations,⁵ the current actions being taken by NMFS may lay the groundwork for better, less burdensome regulations going forward.

Statement of Organization, Practices and Procedures (SOPPs)

Under the current operations, the general public, including small businesses, must go to a Council office or request information by mail if they want to know how the Councils function, how they are organized and what their limits are in fisheries management and policy. The proposal requires the Councils to post their SOPPs on the Internet. Advocacy supports this aspect of the proposal. Posting the SOPPs on the Internet will increase public understanding of the process. However, Advocacy encourages NMFS to continue to allow small businesses and others to request a copy by mail or in person to assure access to all, including those who are not Internet savvy or do not have easy access to the Internet.

Council Procedure for Proposed Regulations

The proposal also requires each Council to establish clear internal procedures for proposed regulations. The proposal requires procedures to be described in the Council's SOPP or other written documentation available to the public to inform the public of how it operates. The proposal allows each Council to prescribe the form and detail of the procedure. Advocacy encourages NMFS to provide more guidance on the substance of the procedures to assure consistency and maximum transparency.

³ 74 Fed. Reg. 13386.

⁴ The RFA requires agencies to consider the economic impact that a proposed rulemaking will have on small entities. Pursuant to the RFA, federal agencies are required to prepare a regulatory flexibility analysis (IRFA) to assess the economic impact of a proposed action on small entities and consider less burdensome alternatives. See, 5 USC § 6031 et al.

⁵ In 2005, Mark Crain prepared a study on *The Impact of Regulatory Costs on Small Firms*. It indicated that the overall cost of federal regulation totals \$1.1 trillion; the cost per employee for firms with fewer than 20 employees is \$7,647, 45 percent higher than their larger counterparts with 500 or more employees. The Crain report is located at <http://www.sba.gov/advo/research/rs207tot.264.pdf>.

In addition to Internet publication of SOPPs, Advocacy encourages NMFS to establish a minimum set of standards for information available on a Council's website. Such information should include, but not be limited to all fishery management plans and amendments; final rules, frameworks, and regulatory amendments implementing actions; environmental impact statements; environmental assessments; regulatory impact reviews; and other important documents. Councils should also be required to post, prior to Council meetings, all draft documents up for discussion, correspondence received, and any other materials included as part of the meeting's briefing booklets on their websites. Providing the small businesses with this information, will increase an understanding of the process and encourage comments.

Public Notice

The proposed rule also specifies a revised means for announcing meetings of a Council, Scientific and Statistical Committees (SSCs), advisory panels, other committees, and the Council Coordination Committee. Currently, the regulations require public notification through the news media. The revised regulations allow for notice of regular, emergency, and closed meetings by any means that will result in wide publicity in the major fishing ports of the region and those other ports with an interest in any of the fisheries likely to be addressed in the proceedings. The proposal further stipulates that notices about regular and emergency meetings by website and email postings alone are not sufficient.

Advocacy supports this aspect of the proposal. Adequate notice is necessary to assure that the industry is aware of and able to participate in the process. Moreover, not limiting notice to the Internet will encourage participation by all interested parties, even those who may not have regular access to the Internet.

Financial Disclosures for Members of Scientific and Statistical Committees

The proposal also requires members of SSCs to file financial disclosures. Section 600.235 states that the members must disclose financial interest in harvesting, processing, lobbying, advocacy, or marketing. "Financial interests" include stock, equity, or other ownership interests in, or employment with, any company business, fishing vessel, or other entity engaging in harvesting, processing, lobbying, advocacy, or marketing activity under the jurisdiction of the Council. It also includes stock, equity, or other ownership interests in, or employment with, any company that provides equipment or other services essential to harvesting, processing, lobbying, advocacy, or marketing activity under the jurisdiction of the Council.

The public has an interest in knowing if a member of an SSC has a financial interest in a matter that may impact on that member's ability to act in an impartial manner. In addition to the interests stated, Advocacy encourages NMFS to include grants, income, or other forms of compensation in the disclosure of financial interests from the groups that are listed.

Definition of Advisory Panel

Finally, the proposal defines an advisory panel (AP) as a standing committee formed and selected by a regional management council under the authority of Magnuson Stevens Act section 302(g)(2). However, section 302(g)(4) of the Magnuson Act also refers to the formation of APs. Should section 302 (g)(4) also be included in the definition of APs?

Conclusion

Advocacy appreciates the opportunity to comment on this proposed rule. Advocacy recognizes the importance of this undertaking and is available to assist NMFS in any way that it can. Please feel free to contact me or Jennifer A. Smith at (202) 205-6943 or jennifer.smith@sba.gov if you have any questions or require additional information. We look forward to working with you.

Sincerely,
/s/

Susan M. Walthall
Acting Chief Counsel for Advocacy

/s/

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