



April 12, 2016

VIA ELECTRONIC SUBMISSION

Mark Wildman
International Fisheries Division
Office of International Affairs and Seafood Inspection
NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910

Re: NOAA-NMFS-2015-0122 Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program

Dear Mr. Wildman:

The Office of Advocacy of the U.S. Small Business Administration (Advocacy) submits these comments on the proposed rule on *Magnuson-Stevens Fishery Conservation and Management Act; Seafood Import Monitoring Program*.¹ Advocacy is concerned that the economic impact the proposal may have on small entities has not been fully analyzed. Advocacy encourages the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA) to reevaluate the costs in the Regulatory Flexibility Act (RFA) section of the proposed rule, analyze the full economic impact that this rulemaking may have on small entities, and consider less burdensome alternatives for small entities.

Advocacy Background

Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration. The RFA,² as

¹ 81 Fed. Reg. 6210, February 5, 2016.

² 5 U.S.C. § 601 et seq.

amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.⁴ The agency must include, in any explanation or discussion accompanying the final rule's publication in the Federal Register, the agency's response to these written comments submitted by Advocacy on the proposed rule, unless the agency certifies that the public interest is not served by doing so.⁵

The Proposed Rulemaking Underestimates the Costs of the Rule and Fails to Analyze Viable Alternatives

On February 5, 2016, NMFS published a proposed rule in the Federal Register to establish filing and recordkeeping procedures relating to the importation of certain fish and fish products, in order to implement the Magnuson-Stevens Fishery Conservation and Management Act's (MSA) prohibition on importing and trading of fish that were taken, possessed, transported, or sold in violation of any foreign law or regulation. Specifically, NMFS seeks to integrate catch and landing information and documentation for certain fish and fish products within the International Trade Data System (ITDS) and to require electronic data collection through the Automated Commercial Environment maintained by the Department of Homeland Security and Customs and Border Protection. Under these procedures, NMFS would require an annually renewable International Fisheries Trade Permit (IFTP) and specific data for certain fish and fish products to be filed and retained as a condition of import to enable the United States to exclude the entry into commerce of products of illegal fishing activities. NMFS believes this information will help authorities verify that the fish or fish products were lawfully acquired by tracing these products from harvest to entry into commerce. This rule will likely impact U.S. small businesses that import fish and fish products derived from certain at-risk species, which are listed in NMFS's notice of proposed rulemaking.⁶

NMFS estimates that there are approximately 2,000 importers and 600 entry filers of commodities that would be subject to the proposed reporting requirements. Although NMFS asserts that it does not have access to data about the business sizes of these importers and receivers, it is likely that the majority may be classified as small entities.⁷ The Office of Advocacy is concerned that the impacts of the rule on small entities is

³ Pub. L. 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C. § 601 et seq.).

⁴ Small Business Jobs Act of 2010 (PL 111-240) § 1601.

⁵ Id.

⁶ 81 Fed. Reg. 6210-6222.

⁷ Proposed Rule To Implement Seafood Import Monitoring Program Regulatory Impact Review And Initial Regulatory Flexibility Analysis, page 11.

greater than that indicated by NMFS' RFA analysis. Specifically, Advocacy is concerned that NMFS' underestimated the costs of complying with the proposal and failed to analyze all of the viable alternatives.

NMFS Underestimated the Cost of Compliance

In the IRFA section of the proposed rulemaking, NMFS asserts that the only new cost will be the industry wide cost of \$60,000 due to permitting fees.⁸ Although the proposal requires a collection of information, the IRFA does not have information about the costs of the reporting requirements. Instead, NMFS states that there will not be additional costs because the industry is otherwise in compliance with the rule.

According to the small business industry representatives, however, the proposed rule requires much more information than is currently required. Under the existing rules, importers provide information from the processor level. Section 300.324 (b) of the proposed rule requires the importer of record to provide the following:

- (1) Information on the entity(ies) harvesting or producing the fish: Name and flag state of harvesting vessel(s) and evidence of authorization; Unique vessel identifier(s) (if available); Type(s) of fishing gear; Name(s) of farm or aquaculture facility.
- (2) Information on the fish that was harvested and processed: Species of fish (scientific name, acceptable market name, and ASFIS number); Product description(s); Name of product(s); Quantity and/or weight of the product(s).
- (3) Information on where and when the fish were harvested and landed: Area(s) of wild-capture or aquaculture location; Date(s) of harvest or trip(s); Location of aquaculture facility; Point(s) of first landing; Date(s) of first landing; Name of entity(ies) (processor, dealer, vessel) to which fish was landed. Some entries may comprise products from more than one harvest event and each event relevant to the shipment must be documented.
- (4) The NMFS-issued IFTP number for the importer of record.⁹

Likewise, section 300.324(e) requires the importer of record to perform the following additional recordkeeping:

- (e) In addition to the entry recordkeeping requirements specified at 19 CFR part 16, the importer of record is required to maintain records containing information on the chain of custody of the fish or fish products sufficient to trace the fish or fish product from point of entry into U.S. commerce to the point of harvest, including information that identifies each custodian of the fish or fish product (such as any transshipper, processor, storage facility or distributor). Such records may include widely used commercial documents such as declarations by the harvesting/carrier vessels or bills of lading. Regardless of whether data is reported at entry or maintained by the importer, the importer must retain records in

⁸ 81 Fed. Reg. at 6220.

⁹ 81 Fed. Reg. at 6222.

electronic or paper format under the recordkeeping requirements specified in § 300.323.¹⁰

According to the National Fisheries Institute (NFI), the proposed rule will raise costs significantly for small entities. For example, crabmeat is a product on the list of products that are subject to the proposed rule.¹¹ NFI states that the costs of completing the new forms per container¹² of blue crab would be \$19,299. The NFI cost estimate is limited to direct labor costs of submitting the required data. It does not include the costs of audits of the information received from overseas suppliers, training costs, the longer lead time, or additional insurance for inaccurate uploads.¹³

If a small business processed only ten containers per year, the costs would be close to \$200,000 for one business. Advocacy encourages NMFS to provide more accurate information about the potential costs of this proposal.

NMFS Should Consider Additional Alternatives

As noted above, the proposed rule may have a significant economic impact on small entities. Advocacy encourages NMFS to consider less costly alternatives. In the proposed rule, NMFS requested comment on a voluntary third party certification and trusted trader program as a means for streamlining the process. NMFS also requested comments on the European Union's catch certification scheme. Advocacy encourages NMFS to analyze those programs as potential alternatives to the proposal. If they are not viable alternatives, Advocacy encourages NMFS to provide an explanation in the interest of transparency.

Advocacy further asserts that the number of required data points increases the economic burden on small entities. Advocacy encourages NMFS to consider whether it is necessary for small entities to provide all of the data points and to analyze the impact of reducing the data points for small entities.

Finally, NMFS sought comment on the amount of time that is needed for the firms to adapt their practices to comply with the requirements of the final rule. NMFS estimated that firms may need from 90 days to 12 months to comply. Advocacy encourages NMFS to allow small entities at least 12 months to comply with the final rule.

Conclusion

Advocacy recognizes that the importation of illegal, unreported, or unregulated fishing and seafood fraud are problems that need to be addressed. However, the proposed

¹⁰ Id.

¹¹ 81 Fed. Reg. at 6214-6215.

¹² In its comment letter for this proposed rule, the National Customs Brokers and Forwarders Association of America (NCBFAA) states that Customs and Border Protection clears 26 million containers per year. As noted in NCBFAA's letter, the proposed rule will impact a small fraction of the containers. However, even a small fraction of containers would render this proposal far more costly than NMFS had indicated.

¹³ Letter dated April 5, 2016 from John Connelly, President, National Fisheries Institute.

regulation may have a significant economic impact on small entities. Advocacy encourages NMFS to give full consideration to the concerns raised by small entities and small business stakeholders regarding the proposed rule in order to develop a solution that reaches the agency's goals while lessening the burden on small entities. Advocacy further encourages NMFS to provide a final regulatory flexibility analysis that provides transparency as to the economic impact of the rulemaking and analyzes less costly alternatives.

Thank you for the opportunity to comment on this important proposal and for your consideration of Advocacy's comments. If you have any questions regarding these comments or if Advocacy can be of any assistance, please do not hesitate to contact me or Jennifer Smith at (202) 205-6943.

Sincerely,

/s/

The Honorable Darryl L. DePriest
Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/s/

Jennifer A. Smith
Assistant Chief Counsel
For Economic Regulation & Banking
Office of Advocacy
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Copy to: The Honorable Howard Shelanski
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