

November 10, 2009

Via Electronic and Regular Mail

Dr. Jane Lubchenco  
Administrator  
National Oceanic and Atmospheric Administration  
1401 Constitution Avenue, NW  
Washington, DC 20230

Re: Atlantic Herring Fishery

Dear Dr. Lubchenco:

By way of introduction, Congress established the Office of Advocacy to represent the views of small business before Federal agencies whose policies and activities may affect small businesses.<sup>1</sup> 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.<sup>2</sup> The RFA requires agencies to consider the economic impact that a proposed rulemaking will have on small entities and consider less costly alternatives, if the rulemaking is expected to have a significant economic impact on a substantial number of small entities.<sup>3</sup>

In June 2009, the Transboundary Resources Assessment Committee (TRAC) performed a stock assessment. As a result of the TRAC report, the Science and Statistical Committee (SSC) set the Acceptable Biological Catch (ABC) at 90,000 MT.<sup>4</sup> The current ABC is 194,000 MT.<sup>5</sup> As such, the draft proposed ABC reduces the current ABC by more than 50 percent. The decision to reduce the allowable catch was made even though the SSC recognized that there was substantial uncertainty in the assessment.<sup>6</sup> It was also made

---

<sup>1</sup> See, 15 U.S.C. § 634c (4).

<sup>2</sup> 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).

<sup>3</sup> 5 USC § 601 et. al.

<sup>4</sup> Memorandum from Dr. Steve Cadrin, Chairman, SSC, September 23, 2009, page 2.

<sup>5</sup> Draft Proposed Atlantic Herring Specifications for 2010-2012 Fishing Years (January 1, 2010-December 31, 2012) Discussion Document, November 3, 2009, page 25.

<sup>6</sup> Memorandum from Dr. Steve Cadrin, Chairman, SSC, September 23, 2009, page 2.

despite the fact that the New England Fishery Management Council (NEFMC) has stated that the herring fishery is not overfished and the data from the TRAC assessment is questionable.<sup>7</sup>

On November 6, 2009, the Office of Advocacy held a conference call with members of the herring and lobster fishing industries and representatives from the Department of Commerce, the National Marine Fisheries Service, the National Oceanic and Atmospheric Administration, and the New England Fishery Management Council. The purpose of the call was to discuss the data issues surrounding the specifications for the 2010-2012 herring fishery.

Advocacy is extremely concerned about the impact that reducing the ABC by greater than 50 percent may have on small businesses in the herring fishery, the lobster fishers who rely on herring for bait, and the small communities that are dependent on the fish stock for economic vitality. The information garnered during the call indicated that the proposed reduction will result in a number of fishery members leaving the industry. This would be devastating not only to the fishers but also to the small communities, spanning from New Jersey to Maine, that rely on the herring and lobster fisheries.

Advocacy believes that employing a wider range of scientific information is necessary to assure that unnecessary economic harm is not visited on small entities. We encourage NMFS to perform a new benchmark assessment for the Atlantic herring fishery. In the meantime, Advocacy further encourages NMFS to extend the 2009 specifications to 2010 and to utilize maximum flexibility in considering alternatives.

If you have any questions, please contact Jennifer A. Smith at 202-205-6943. Thank you for your assistance in this matter.

Sincerely,

/s/

Susan M. Walthall  
Acting Chief Counsel of Advocacy

/s/

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

---

<sup>7</sup>Memorandum from Lori Steele, NEFMC Staff, Herring PDT Chair, July 28, 2009, pages 1 and 6, respectively.