

Congress of the United States
Washington, DC 20515

April 29, 2011

Dr. Jane Lubchenco
Administrator
National Oceanic and Atmospheric Administration
1401 Constitution Avenue, NW Room 5128
Washington, DC 20230

Dear Administrator Lubchenco:

We are writing to express our concern regarding a recent memorandum dated April 20, 2011 from the National Oceanic and Atmospheric Administration (NOAA) Office of the General Counsel and the implications it has for future prioritization and policy decisions at NOAA.

We have supported legislative language that would prevent NOAA from making funds available for development and approval of new limited access privilege programs in areas of the country where they are strongly opposed. Congress passed and the President signed the Full Year Continuing Appropriations Act for 2011 which included Section 1349 stating that none of the funds made available may be used to approve a new limited access privilege program for any fishery under the jurisdiction of the South Atlantic, Mid-Atlantic, New England, or Gulf of Mexico Fishery Management Councils in fiscal year 2011. This language became law because of the serious concerns that remain regarding the impacts that catch share programs have on the fishing industry and coastal economies.

The memorandum interpreting the use of 2011 appropriated funds for Limited Access Privilege Programs raises a number of questions and concerns. The memorandum points out that while the language included in Section 1349 prohibits the use of funds to approve a new limited access privilege program, there remains the possibility of the use of funds to develop new limited access privilege programs while approval is awaited for sometime in the future. NOAA would be well-advised not to pursue such an imprudent course.

During these times of austerity it would be irresponsible for NOAA to use important funding to develop programs that may never be approved. It is not uncommon for restrictions on spending, such as that of Section 1349, to be included in appropriations bills on an annual basis for future years. We intend to pursue inclusion of the prohibition on funding new limited access privilege programs in certain regions in the Fiscal Year 2012 Commerce, Justice, Science and Related Agencies Appropriations bill. We also expect that, as was the case on February 19th, a strong majority in the House of Representatives will vote for such an amendment to a government spending bill.


Additionally, the memorandum states that Section 303A of the Magnuson Stevens Fishery Conservation and Management Act (MSA), which defines limited access privilege programs, includes a narrower definition than the concept of limited access programs or catch

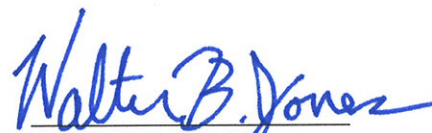
share programs. This raises a number of questions considering Section 303A was intended to be the authorizing language for all catch share programs except certain existing community development quotas, and included a number of restrictions and safeguards. NOAA has seemingly taken the position that they can approve programs which would functionally be a limited access privilege program but that would not legally be considered as such because certain elements of the definition are excluded, such as permits. This is counter-intuitive, considering that all programs that serve as limited access privilege programs should include all elements of this definition and all safeguards mandated by Congress. The agency should not be implementing a category of catch share program not specifically authorized by Congress.

We would like to know if NOAA intends to ignore public opposition to catch shares and continue funding development of catch share programs using fiscal year 2011 funding, and if so, where. We further request that you provide us with a detailed review of the legal authority NOAA believes it has to approve limited access privilege programs and catch share programs that are not authorized under Section 303A of MSA. This review should include the authority and requirements NOAA uses to approve programs that would generally be considered to be catch shares by the public and amendments to fishery management plans that allocate shares of a Total Allowable Catch (TAC) to individuals or groups.

Thank you for your consideration of this critical matter. We look forward to hearing back from you.

Sincerely,


FRANK PALLONE, JR.
Member of Congress


WALTER JONES
Member of Congress