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The Honorable Doc Hastings, Chairman  
U.S. House of Representatives Committee on Natural Resources  
1324 Longworth House Office Building  
Washington, D.C. 20515

**RE: H.R. 2610, the Asset Forfeiture Fund Reform and Distribution Act of 2011**

Dear Chairman Hastings:

I am writing today to express my support for H.R. 2610, *the Asset Forfeiture Fund Reform and Distribution Act of 2011* ("the Act"), filed by Massachusetts Congressman Barney Frank. The legislation amends the Magnuson-Stevens Fishery Conservation and Management Act ("the MSA") to reform procedures for the payment of funds from the Asset Forfeiture Fund ("AFF") established through the MSA. This Act is an important step toward ensuring fairness for fishermen and Massachusetts fishing communities while rebuilding faith in the law enforcement process.

The AFF is the account into which fines assessed for violations of fisheries regulations issued pursuant to the MSA are deposited. It was established to provide the necessary resources for "expenses directly related to investigations and civil or criminal enforcement proceedings." However, reports issued within the last year by the Department of Commerce Inspector General ("IG") are highly critical of enforcement proceedings and the management of the AFF by the National Oceanographic and Atmospheric Administration's Office of Law Enforcement and General Counsel for Enforcement Litigation ("NOAA OLE and GCEL").

Fishing, and the communities and businesses built around it, have been a major economic engine and a source of pride for Massachusetts for over two centuries. There are currently twenty-nine fishing communities and ports in the Commonwealth. Among these are the City of New Bedford, which in 2010 landed \$279.2 million worth of fish, making it the largest fishing port in the nation in terms of value; and the City of Gloucester, which was the tenth largest fishing port in the nation in terms of volume in 2010. Moreover, Massachusetts leads the New England region in landings revenue, pounds of fish landed, sales, income and jobs generated by the commercial fishing industry.



Unfortunately, a series of problematic decisions, including the overzealous actions of federal regulators, has threatened the livelihoods of those who work in the fishing industry in Massachusetts. Over the course of the past several years, numerous fishermen have faced excessive fines in NOAA's Northeast Region, particularly in New Bedford and Gloucester. The assertions made by fisherman in Massachusetts paint a picture of law enforcement that was able, through lack of oversight, to run roughshod over the very entities it was tasked with regulating. Indeed, many of these assertions were validated by the report on NOAA enforcement operations issued last year by the IG. That report details enforcement practices by the NOAA OLE and GCEL in the Northeast Region that were apparently intended to create a disincentive for fishermen to appeal fines. The review by the IG found evidence of:

a troubling pattern in the Northeast Region of respondents giving up their right to due process in having their cases heard before a third party. Simply put, the higher the assessed fines and number of violation counts charged, the greater the risk for respondents if they opt for a hearing before an Administrative Law Judge (ALJ). Such risk leverages respondents into settlements with [NOAA] GCEL, because if they fail to prevail at hearing, they face substantial monetary liability for up to the full penalty for the total assessed fines and counts charged. There is also a lack of confidence on the part of fishermen that the ALJ process is fair, transparent, and impartial.

*Final Report—Review of NOAA Fisheries Enforcement Programs and Operations*, Report No. OIG—19887-2 (September, 2010).

In those instances where fishermen appealed fines, the IG's review confirmed that the process was lengthy and time-consuming, and seemed intentionally designed to make it difficult on fishermen to challenge excessive fines.

The problems extend beyond questionable enforcement practices. An independent forensic audit of the AFF commissioned by the IG as part of his review identified pervasive mismanagement of the AFF. The scope of the mismanagement detailed in the audit is alarming. Expenditures questioned by the IG included the acquisition of a \$300,000 luxury boat as an undercover vessel and \$580,000 in international travel between 2005-2009. Findings include the inability by NOAA to account for the exact amount of money in the fund, or even to define what money is supposed to be deposited into the fund. According to the independent auditor, "[n]o single unit or individual within NOAA has a detailed understanding of the AFF and how it functions from start to finish." *Final Report: Forensic Audit Services Relating to the NOAA Fisheries Fund* (May 13, 2010). Additionally, the audit found that there was no formal AFF budget; the process for using money from the fund is "highly decentralized and inconsistent," and AFF funds were co-mingled with other funds to such a degree that it was "nearly impossible to delineate, track and oversee the receipt and expenditure of only those monies," in the AFF. The IG concluded that based on the independent audit, "the AFF has operated through poorly defined, disjointed, and inconsistent processes that lack effective internal controls, and for which no single NOAA office appears to be in charge or accountable because it is so decentralized." *Review of NOAA Fisheries Enforcement Asset Forfeiture Fund* (July 1, 2010).

The *Asset Forfeiture Fund Reform and Distribution Act of 2011* addresses the criticism of overzealous enforcement and widespread mismanagement of the AFF by NOAA OLE and GCEL. First, the Act prospectively shifts the use of assets in the fund back to the states. Under this legislation, the states will be able to use the funds for purposes originally intended by the MSA: research and monitoring of fish stocks; data collection; socioeconomic assessments of fishing communities; analysis of fisheries management and the impact of management decisions; and preparation of impact statements. This is critically important information for states with strong fishing economies to have as we continue the transition to a sector-based regulatory system under Amendment 16. In addition, it provides for reimbursement of legal fees to those fishermen who successfully challenged an excessive fine. Finally, the legislation definitively addresses assertions of unethical or improper behavior by existing ALJs assigned to hear challenges to fines assessed on fishermen by creating a rotating system of ALJs to hear cases. Each provision in the bill addresses identified weaknesses in the current enforcement system in a straightforward way that remains true to the original intent of the MSA.

In addition, I briefly want to express my support for legislation that was filed in the Senate and that may come before the House.

Currently pending before the Senate Committee on Commerce, Science and Transportation is S. 1304, *the Fisheries Fee Fairness Act*, which was filed by Massachusetts Senator John Kerry. Senate 1304 seeks to address the issue of overzealous enforcement head-on by offering some recourse to fishermen facing high legal fees as the result of appropriately pursued challenges to fines. Implicit in the language of the Act is the understanding that the defense process established by the NOAA GCEL has been overly burdensome to individual fishermen, many of whom are independent small businesses. Like H.R. 2610, this legislation expressly addresses this by providing for reimbursement of legal fees through the AFF and capping the reimbursement amount at \$200,000 per individual. It establishes reasonable eligibility criteria and retains the discretion of the Secretary of Commerce. Finally, it begins to establish a formal process for seeking reimbursement. I strongly support this legislation as a timely means to address unfair treatment at the hands of federal regulators and a way to begin rebuilding trust in the regulatory enforcement process.

There is no question that the fishing industry in Massachusetts and throughout New England is in crisis. Our office has been on the front lines seeking to address this on the state level. In 2006, we successfully brought a lawsuit against the Secretary of Commerce arguing that the fisheries management plan in place at the time, Framework 42, did not properly consider the interest of our fishermen and fishing communities.

While we were able to successfully force the modification of the Framework 42, our concerns have been renewed with the recent transition to a "catch share" system, known as Amendment 16. We do not believe that NOAA's regulations are supported by the best scientific information available, and as a result, the catch shares are set artificially low. Unable to sustain a living, many fishermen are being driven out of business by this over-regulation. This is further complicated by the overzealous enforcement described above, which H.R. 2610 and S. 1304 seek to address.

In short, we need a comprehensive legislative solution on the federal level to fully address this problem on behalf of our fishermen and fishing communities. For this reason I support H.R. 2610, *the Asset Forfeiture Fund Reform and Distribution Act of 2011* and S. 1304, *the Fisheries Fee Fairness Act of 2001*.

Cordially,



Martha Coakley

cc: The Honorable Edward Markey, Ranking Member, Committee on Natural Resources  
The Honorable Barney Frank  
The Honorable John F. Kerry  
The Honorable William R. Keating  
The Honorable Stephen F. Lynch  
The Honorable James P. McGovern  
The Honorable John F. Tierney  
The Honorable Michael E. Capuano  
The Honorable Richard Neal  
The Honorable John Olver  
The Honorable Niki Tsongas  
The Honorable Scott Brown  
The Honorable Therese Murray, Massachusetts Senate President  
The Honorable Bruce E. Tarr  
The Honorable Ann-Margaret Ferrante