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The Honorable John D. Rockefeller, IV
Chairman, U.S. Senate Committee on Commerce,
Science & Transportation
531 Hart Senate Office Building
Washington, D.C. 20510

RE: S. 1304, the Fisheries Fee Fairness Act of 2011

Dear Chairman Rockefeller:

I am writing today to express my support for Senate Bill 1304, *the Fisheries Fee Fairness Act of 2011* ("the Act"), filed by Massachusetts Senator John Kerry. This legislation authorizes the United States Secretary of Commerce to reimburse legal fees to fishermen who have successfully challenged fisheries enforcement penalties assessed by the National Oceanographic and Atmospheric Administration's Office of Law Enforcement and General Counsel for Enforcement Litigation ("NOAA OLE and GCEL"). The Act is an important step toward ensuring fairness for fishermen and Massachusetts fishing communities while rebuilding faith in the law enforcement process.

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 Inspector General for the United States Department of Commerce. 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 Inspector General 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 Inspector General'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 *Fisheries Fee Fairness Act* seeks to address this issue 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. The legislation expressly addresses this by providing for reimbursement of legal fees through the Asset Forfeiture Fund ("AFF") established under section 311 (e)(1) of the Magnuson-Stevens Fishery Conservation and Management Act ("the MSA") 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 by those who are subject to it and dependent upon the decisions made by regulators for their livelihood.

In addition, I briefly want to express my support for legislation that was filed in the House and that I hope will eventually be considered by the Senate.

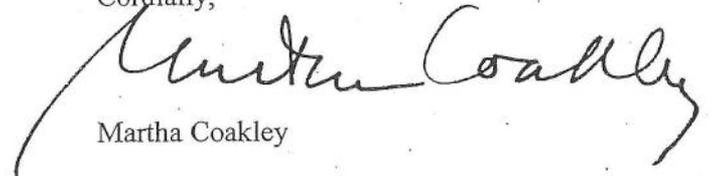
Currently pending in the U.S. House of Representatives is H.R. 2610, *the Asset Forfeiture Fund Reform and Distribution Act of 2011*. The bill, which was filed by Congressman Barney Frank, builds upon the premise of the *Fisheries Fee Fairness Act*, to address the criticism of widespread mismanagement and misuse of the AFF by NOAA OLE and GCEL. Specifically, the legislation provides for reimbursement of legal fees to those fishermen who successfully challenged an excessive fine, and also 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 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. 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.

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 S. 1304 and H.R. 2610 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 the S. 1304, *the Fisheries Fee Fairness Act of 2001* and H.R. 2610, *the Asset Forfeiture Fund Reform and Distribution Act of 2011*.

Cordially,



Martha Coakley

cc: The Honorable Kay Bailey Hutchison, Ranking Member
The Honorable John F. Kerry
The Honorable Barney Frank
The Honorable Edward Markey
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