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**Remarks of Attorney General Martha Coakley**  
**Before Joint Committee on the Environment, Natural Resources and Agriculture**  
**Hearing of the Subcommittee on Catch Share and Fisheries Management**  
**October 12, 2011**  
*(As prepared for delivery)*

Thank you, chairmen and members of the committee for having us here today.

I'd say I'm glad to be here, but the fact is that none of us would need to be here if not for the top-to-bottom failings by the federal government to properly regulate our fishing industry here in Massachusetts. The Department of Commerce and NOAA have failed to set proper regulations, and then they've failed to fairly enforce those regulations. I'd like to discuss these issues with you briefly today as well as what we believe should be done to address them moving forward.

Massachusetts has been a leader in the nation's fishing industry for more than two centuries, a history that has been a source of great pride for so many of us. But, the fishing industry is more than just a part of our history, it is a major present-day economic engine, and an important part of our future.

There are currently twenty-nine fishing communities and ports in the Commonwealth. Among these is 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 addition, Gloucester was the tenth largest port in the nation in terms of volume. Overall, Massachusetts leads New England in revenue, sales, income, and jobs generated by the commercial fishing industry.

What does this mean? It means that all of us, whether you live in a coastal community or not, have a stake in a healthy and vibrant fishing industry here in our Commonwealth. It is also why the stakes are so high when it comes to the regulations governing how and when our fishermen are allowed to work. The federal government's setting of those regulations has been problematic for years.

Our office first became involved in 2006 when we brought a lawsuit against the Secretary of Commerce challenging the regulatory system in place at the time, called Framework 42. We argued that the regulations did not properly consider or balance the interests of our fishermen

and fishing communities, in violation of the federal Magnuson-Stevens Act. Ultimately, we helped force the modification of those regulations.

Unfortunately, the transition during the last two years to a “catch share” system, known as Amendment 16, has only renewed our concerns. Once again, the federal government has failed to properly consider the interests of the majority of our fishermen. They have fostered a fishing policy that sets catch limits artificially low, and sought to justify it with “science” questioned by many experts in the field. The result is millions of pounds worth of healthy stocks that cannot be maximized, and hundreds of millions of dollars left on the table to sustain their small businesses and support our fishing communities.

The impact of the continued enforcement of these faulty regulations will be devastating to our fishing industry. Many of our fishermen are already being driven out of business. And the potential for a permanent and irreversible change to the fabric of our fishing communities is real.

We’ve already attempted a legal solution. Our office, along with Governor Patrick, supported a case brought by New Bedford and Gloucester challenging these limits and arguing that they should be increased by up to 30%. A federal judge sided with the Department of Commerce, acknowledging that other valid scientific bases for setting catch limits exist, but ruled that the federal government did not act in an arbitrary or capricious manner when setting the catch limits. Gloucester and New Bedford are appealing that decision and the Department of Commerce should not be resting on laurels that they were not arbitrary or capricious.

We believe the best remaining option to address this is through legislative action on the federal level to overhaul the Magnuson-Stevens Act and ensure that the national standards included in the Act are given equal weight by the federal government. This would include real assessments of the economic and socioeconomic impact of the regulations on fishing communities. As the Committee is aware, legislation that begins to make these and other necessary changes has been filed by Congressman Frank, Senator Kerry and others in the delegation. I support these efforts and urge the Committee to as well.

These NOAA regulations would be problematic enough if we also didn’t have reason to be greatly skeptical of NOAA’s ability to fairly enforce them.

Accusations of targeted, unfair prosecutions of our fishermen by NOAA had been raised for a number of years. Beginning in 2008, I heard those concerns repeated over and over as we met with local fishermen in coastal communities. And, those concerns were ultimately backed up by two separate, independent reports issued by the Department of Commerce’s own Inspector General and a Special Master appointed by the former Secretary of Commerce.

The reports were thorough and hard-hitting, and they outline in full detail the baseless targeting of Massachusetts fishermen that created a culture of fear and paranoia. They concluded that NOAA had been engaged in “overzealous,” “abusive,” and “arbitrary” enforcement against Massachusetts fishermen and led the Secretary of Commerce to acknowledge a “systemic failing” of oversight by agency management.

As someone who has made law enforcement my career, these reports are deeply disturbing. However, what has made these reports even more disturbing has been Commerce’s lack of response in the wake of these documented patterns of behavior by officers and attorneys

responsible for enforcement.

It is our understanding that the Department has refused to discipline a single member of their enforcement personnel who engaged in this egregious behavior, or a member of their leadership team whose lack of oversight resulted in these failings. To be sure, Commerce has tried to shift the conversation to what they intend to do prospectively. However, the damage to the relationship between the regulators and the regulated is so significant that moving forward is impossible without a full accounting of what happened in the past. And, while Department has returned the money the fishermen paid in unnecessary fines, they have refused to return the hundreds of thousands of dollars in legal fees they incurred while challenging them.

So what can be done?

The first is to demand more accountability and transparency from NOAA and the Department of Commerce. We have sent a letter to the Department of Commerce demanding that they release all documentation relating to decisions to discipline, or not discipline, individuals named in the Inspector General's and Special Master's reports. We have asked that Commerce respond in full by October 17<sup>th</sup>. Additionally, we have indicated a desire to discuss what we see as outstanding issues directly with senior officials in Commerce and NOAA.

We ask the Committee to support these efforts.

Our office also believes that the Department should refund the legal fees for all parties who were unfairly penalized, as well as provide restitution for lost business costs incurred due to overzealous enforcement of federal regulations, including inspections. We have urged NOAA to reimburse those costs on their own. Thus far, they have not done so.

It is why we also support the legislation filed by Senator Kerry and Congressmen Frank that would reimburse those legal fees. This legislation also starts the process of taking into account the economic and socioeconomic impact of burdensome regulations on fishing communities, which will help address the concerns we've experienced with Framework 42 and Amendment 16.

We encourage the Committee to support those efforts as well.

Regulations are only effective when we can ensure the credibility and integrity of those who enforce them. Without a full accounting by the Commerce Department and NOAA for what happened and a transparent plan on how they will address those problems moving forward, our fishing communities can have little confidence that the necessary changes have been made to prevent such abusive behavior from re-occurring in the future. We must remain vigilant in demanding these answers and ensuring that our fishing communities are protected. Our office pledges to do just that, and I urge this committee to do the same.

Thank you.

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