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The Honorable John Thune  
Chairman  
U.S. Senate Committee on Commerce, Science & Transportation  
512 Dirksen Senate Building  
Washington, D.C. 20510

The Honorable Bill Nelson  
Ranking Member  
U.S. Senate Committee on Commerce, Science & Transportation  
716 Senate Hart Office Building  
Washington, D.C. 20510

**RE: Reauthorization of the Magnuson-Stevens Act and H.R. 1335, *Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act***

Dear Chairman Thune and Ranking Member Nelson:

I am writing to encourage the Committee to expedite the review of H.R. 1335, *Strengthening Fishing Communities and Increasing Flexibility in Fisheries Management Act* and the reauthorization of the Magnuson-Stevens Act ("MSA"). H.R. 1335, as adopted by the U.S. House of Representatives on June 1, 2015, provides thoughtful amendments to the MSA that are a significant step in the protection of our nations' fishing industries and the fish species those industries rely upon. We ask that you consider the following amendments as you continue the reauthorization process.

The commercial fishing industry has deep roots in Massachusetts, spanning over four hundred years. Not only is the fishing industry an important piece of the cultural fabric of our state, it is also a significant revenue generator. According to the U.S. Department of Commerce, New England's seafood industry generated \$8.5 billion in sales in 2012, and in Massachusetts alone, it generated 107,000 jobs, \$2.2 billion in income, and \$3.4 billion in value added impacts.<sup>1</sup>

The Massachusetts Attorney General's Office is committed to a balanced approach aimed at ensuring both species conservation and the long-term survival of our fisheries. In December 2014, when the MSA was first scheduled for reauthorization, our office provided substantive comments to help craft a law that would better serve the fishing industry both in Massachusetts and nationwide, while protecting fish species and ecosystems. Today, we

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<sup>1</sup> U.S. Department of Commerce, *Fisheries Economics of the United States 2012*, 47 (2012).

provide similar comments on H.R. 1335 and ask that our comments be considered during the Committee's review process.

### Background

Last reauthorized by Congress in 2006, the MSA was enacted to develop a national program for the conservation and management of fishery resources in order to prevent overfishing, facilitate long-term protection of certain fish stocks, and realize the full economic potential of the nation's fishery resources, both as food sources and for other purposes. The MSA provides ten guiding principles, known as "National Standards," to balance the twin goals of environmental protection and sustainable access to fisheries. When woven together, the National Standards provide a comprehensive approach to sustainable fishery management and conservation.

At the end of 2014, Congress extended the 2006 version of the MSA with no changes. Earlier this week, the U.S. House took the first step in updating the MSA through a reauthorization process, incorporating the text of H.R. 1335.

As you know, the Massachusetts fishing industry is facing the worst crisis in its history. In 2013, the Department of Commerce, at the direction of the National Oceanic and Atmospheric Administration ("NOAA") and the National Marine Fisheries Service ("NMFS"), issued regulations slashing catch allocations by 77 percent for certain species in the New England Groundfish fishery. This past year, catch allocations were further reduced, providing yet another blow to fishing families already facing financial ruin.

The reauthorization of the MSA, and the changes proposed by H.R. 1335, are critical to the future and prosperity of the fishing industry and the marine ecosystem. Together, they provide a beacon of hope not only for Massachusetts fishermen, but for all of the nations' fisheries. The changes included in this letter emphasize sound and reliable science, suggest appropriate uses for the Asset Forfeiture Fund ("AFF"), and promote increased transparency in the assessment and management processes.

### Science

While the debate continues over the effectiveness of the catch-shares system and the science upon which NOAA based its most recent assessments for the New England Groundfish fishery, the MSA states in its second National Standard that any fishery management plan and subsequent regulations shall comply with "[c]onservation and management measures ... based upon the best scientific information available."<sup>2</sup> To achieve this standard, fishery management plans are required to contain provisions that are "necessary and appropriate for the conservation and management of the fishery to prevent overfishing

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<sup>2</sup> 16 U.S.C.A. § 1851.

and rebuild overfished stocks, and to protect, restore and promote the long-term health and stability of the fishery.”<sup>3</sup>

According to a recent National Academy of Sciences Report (“Report”), *Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the United States*, there is deviation in the success of rebuilding stocks within a limited time frame (typically ten years), given the uncertainties in assessing and managing fisheries as a result of data limitations and complex ecosystem dynamics.<sup>4</sup> Like MSA National Standard requirements, the Report identifies several strategies to help rebuild stocks while simultaneously reducing short-term economic and social impacts on the fishing industry and surrounding communities. For example, the report suggests: (1) basing rebuilding plans on monitoring and controlling fishing levels, rather than on requiring that fish populations recover to a pre-specified target size within a certain timeframe; (2) taking earlier action to avoid overfishing by imposing gradual limits on fishing when fish populations start to decline rather than waiting until they are overfished; and (3) modifying the “mixed-stock exception” to expand the range of situations to which it could be applied.

The strategies recommended by the National Academies would prove less disruptive to fisheries, provide more predictability for possible stock reductions, avoid steep decreases in future stock reductions, and remove the current fishing limits on healthy stocks that are mixed in with other fish species in the same fishery. These recommendations could lessen some of the harsh economic impacts that have resulted from current rebuilding plans, which often limit fishing for other healthy species in the same fishery.

Consistent with the recommendations suggested in the Report, H.R. 1335 makes several improvements to stock assessment processes and promotes better and more reliable science. For example, H.R. 1335 provides increased flexibility in stock assessments by replacing the ten-year rebuilding requirement with a science-based flexible standard (i.e. a rebuilding period without fishing plus one mean generation). Additionally, the bill allows for the consideration of additional naturally occurring factors, such as environmental conditions and predator/prey relationships. And particularly important to many of our New England fisheries, H.R. 1335 affords additional flexibility for fisheries composed of mixed stocks or multiple species. These added measures, if adopted through the reauthorization process, would make great strides in improving the science and assessment process for our fisheries.

As they navigate current drastic reductions, neither our groundfish industry nor any other fishery should live in constant fear of receiving another devastating blow to their catch shares allocation without clear scientific backing. The science used to develop fishery management plans should provide some level of predictability in stock assessments and

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<sup>3</sup> 16 U.S.C.A. § 1853(a)(1)(A).

<sup>4</sup> National Academy of Sciences, *Evaluating the Effectiveness of Fish Stock Rebuilding Plans in the United States*, (2013).

should be at lower margins of error and uncertainty. Therefore, we ask that you consider the amendments in H.R. 1335 during the MSA reauthorization process.

#### Asset Forfeiture Fund (“AFF”) Reform

During the 112<sup>th</sup> Congressional session, legislation was introduced to address the criticism of widespread mismanagement and misuse of MSA’s AFF by NOAA’s Office of Law Enforcement (“OLE”) and General Counsel for Enforcement Litigation (“GCEL”). Collectively, H.R. 2610, the *Asset Forfeiture Fund Reform and Distribution Act of 2011* and Senate Bill 1304, the *Fisheries Fee Fairness Act of 2011*, offered the potential for important steps toward ensuring fairness for fishermen and Massachusetts fishing communities, while rebuilding faith in the law enforcement process. While neither bill made it to a vote, we are now afforded with an opportunity to incorporate these amendments into the MSA.

Specifically, the changes outlined in H.R. 2610 and S. 1304 provide for reimbursement of legal fees to those fishermen who successfully challenge an excessive fine, and also prospectively shift the use of assets in the fund back to the states. With these revisions, the states will be able to use funds for research and monitoring of fish stocks, data collection, socioeconomic assessments of fishing communities, analysis of fisheries management, and preparation of impact statements. This is critically important information for states with strong fishing economies. Finally, the legislation definitively addresses assertions of unethical or improper behavior by existing Administrative Law Judges (“ALJs”) assigned to hear challenges to fines assessed on fishermen by creating a rotating system of ALJs to hear cases.

Although reimbursement of legal fees and fines is not specifically addressed in H.R.1335, the bill authorizes the use of the AFF for data collection and specifically allows states to use monies from the AFF to survey and assess data-poor fisheries. Additionally, an adopted amendment to H.R. 1335, filed by Representative Bill Keating, authorizes the use of the AFF to fund fishery research and independent stock assessments, conservation gear engineering, at-sea and shoreside monitoring, fishery impact statements, and other priorities established by the Council as necessary to rebuild or maintain sustainable fisheries and ensure healthy ecosystems. Not only are these effective uses of the AFF, but they promote up-to-date stock assessments and state involvement in that assessment process. We support this proposal.

#### Transparency

Although flexibility in fishery management plans is imperative, increasing transparency and collaboration with the public and industry stakeholders is equally important to ensure effective and efficient management measures. To promote these elements, H.R. 1335 requires that “each scientific and statistical committee shall develop such advice in a

transparent manner and allow for public involvement in the process.”<sup>5</sup> An integral step in achieving that goal is the creation of a fishery impact statement, which assesses the effects on the entire fishery of any new fishery management plan, or any change to an existing plan. Part of the economic and social impact evaluation in such a statement studies the effects upon local fishing communities, surrounding fishing communities, and the safety implications of fisherman at sea.

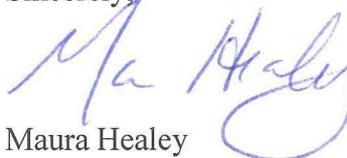
The bill also requires the Secretary of Commerce to publish a plan for implementing and conducting cooperative research programs. These research programs can include acoustic technology, electronic catch reporting, and electronic monitoring devices – some of the same video survey technology that the University of Massachusetts has championed.

As a direct result of overzealous enforcement and mismanagement of NOAA OLE and GCEL, the U.S. Department of Commerce, Office of the Inspector General (“OIG”) investigated NOAA’s conduct and practices regarding fishery management. In the most recent investigation, requested by U.S. Representatives John Tierney and Barney Frank, OIG evaluated fishery management and the rule making process. Several of the OIG recommendations should be considered as possible amendments to the MSA, improving upon transparency and trust in fishery management.

The OIG’s January 16, 2013 Report included example measures that should be adopted in the reauthorization of the MSA, including: addressing Fishery Management Council members’ financial disclosures to resolve conflicts of interest; streamlining NMFS regional office operating guidelines and agreements between NMFS regional offices and Fishery Management Councils; and adopting uniform procedures for the collection, management and maintenance of documents supporting fishery management decisions and administrative records.

The reauthorization of the MSA is needed to ensure effective conservation of fish species and management of all fisheries in our nation’s oceans. For this reason, we support the reauthorization of the MSA and respectfully ask that you consider the proposed amendments included in H.R. 1335 and cited in this letter. Please do not hesitate to contact our office with any questions or to discuss this matter further.

Sincerely,



Maura Healey

cc: MA Congressional Delegation

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<sup>5</sup> H.R. 4724, Section 106 (a).