

# United States Senate

WASHINGTON, DC 20510-2102

October 19, 2011

The Honorable Jane Lubchenco  
Administrator  
National Oceanic and Atmospheric Administration  
Room 5128  
1401 Constitution Avenue N.W.  
Washington, D.C. 20230-0002

Dear Administrator Lubchenco:

I very much appreciate your recent appearance and your testimony at the Senate Commerce Committee field hearing to review Massachusetts fishery management plans.

I hoped the hearing would be a candid and constructive exchange about what needs to be done to make sure our state's fishermen stay in business and prosper both in the short and long term. As you know, this issue is personal to me, and has become particularly difficult in recent years. Too many of our fishermen – particularly small boat fishermen - and local businesses are finding it increasingly difficult just to stay in business, and as you know, tensions between federal regulators and the fishing community have reached a boiling point beyond anything I've ever witnessed in my 26 years in the Senate. That is why I wanted to follow up on our discussions at the hearing - and subsequent discussions with the community and with NOAA – about the urgency of moving forward with specific steps and actions. I appreciate in advance your timely attention to these issues. I am confident that each is vital, even as some are longstanding and we've been meeting on and discussing them a long time. My approach to these issues has been to lay out tangible options to help move forward – and I cannot emphasize enough that now is a critical moment for action.

That is why I am asking you and your staff to meet with me in the next week to consider the following actions that I believe will improve the economic situation of our fishermen and the badly frayed relationship between Massachusetts fishermen and federal regulators. I am hopeful that you will be able to report back to me on progress you can make on these issues when we meet, if not before.

First, as we discussed in the hearing, and you agreed to do, I would like you to come to Massachusetts at your earliest convenience to meet Massachusetts fishing representatives and the members of the Northeast Fishery Management Council to further discuss the major regulatory issues facing New England fishermen, such as allocation reforms, and what improvements can be made to assist small boat fishermen. Please let me know when you are available for this meeting.

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Second, as we discussed during the hearing, I remain strongly in support of a federal disaster declaration to assist those fishermen – mostly small boat fishermen -- who have been negatively affected by recent federal regulations. In November 2010, Massachusetts Governor Deval Patrick sent you a letter with scientific and economic data on the effects of the catch share program on our fishermen and requested a disaster declaration and \$21 million in direct economic relief. Along with members of the Massachusetts Congressional delegation, I sent you a letter in support of Governor Patrick's request. Commerce Secretary Locke denied the Governor's request.

As you will recall, in our meeting in March, I again requested that you provide a disaster declaration for Massachusetts. During that meeting you told me that additional "targeted data" was needed to declare a disaster declaration. The Commonwealth of Massachusetts will be sending you a second report, based on your request, that will provide additional data to allow you to declare a disaster declaration later this month.

Included in the Commerce Committee field hearing testimony of Paul Diodati, Director, Massachusetts Division of Marine Fisheries, was important information on the state of the Massachusetts fishing industry that I believe can help you make the determination that Massachusetts fishermen and fishing communities are in need of a federal disaster declaration. The testimony shows that the transition to catch shares under Amendment 16 has been difficult in terms of the program's allocation determinations and socioeconomic impacts. Specifically, Sector 10 began the fishing year with a 20 percent lower landing allocation compared to 2009 landings; reductions for some individual fishermen were even higher. Actual 2010 landings fell even lower – 60 percent below the previous year's level. Sector 10's reduction in groundfish landings contributed to a 53 percent reduction (\$1.5 million) in its groundfish revenue and 23 percent reduction (\$1.0 million) in its overall revenue. In 2010, nearly 50 percent of active permits fell below the break-even point. A significant number of fishing businesses were operating below break-even points in years prior to 2010. Many fishermen are trying to survive by drawing on personal income or extended credit, shifting more fishing costs to crew or shrinking crew size, or postponing vessel maintenance.

As you know, last month, the Northeast Fisheries Science Center in Woods Hole released a similar analysis and NOAA is developing a report on sector management. I am happy to work with you to provide any additional information you require to make this declaration that is desperately needed to help our fishermen deal with the effects of federal regulations; but if you do not believe you have the necessary information to make such a determination, then I need to know what precise information is needed in your estimation, and we need a plan to provide it rapidly. For fishermen who are losing the way of life their family has proudly carried on for many generations, there is no time to waste. Quite candidly, I've heard many of them – again and again – ask what possible additional information is required, and I struggle to provide them any credible answer.

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Third, as we discussed in the hearing, I appreciate your willingness to support increasing the rollover of unused quota above the existing 10 percent limit. Reports indicate that the available fishery-wide quota is, in most cases, nowhere near fully utilized. For example, only 67 percent of the total allocation of George's Bank Cod has been caught and only 16.5 percent of George's Bank Haddock. With the exception of Georges Bank yellowtail, sectors are permitted to carry over up to 10 percent of unused quota for each stock into the next fishing year under Amendment 16. Earlier this year, along with members of the Massachusetts Congressional delegation, I sent you a letter asking for an increase the percentage of unmet quota that can be rolled over into the 2011 fishing year. I ask you to formally request that the New England Fishery Management Council increase the rollover percentage of unused quota by up to 25 percent consistent with the available science. Adding unmet allocations of fishing stocks to the assigned quota for the coming year will allow the Massachusetts fleet to fish within the current fishing year allocations and set reasonable limits for next year to provide the fleet with an opportunity to profit. This action would be greatly appreciated by fishermen across Massachusetts.

Fourth, I urge you to include appropriate funding in the President's FY 2013 budget request to the Congress to allow the National Marine Fisheries Service, after consultation with New England fishing representatives, to provide a scientific review of all New England fish stock levels by December 2013. Only with the appropriate information that has been developed with the consent of all stakeholders will we be able to resolve the mistrust between fishermen and federal regulators over the science that forms the basis of fishery management decisions.

Fifth, as you know, the transfer of at-sea monitoring costs to our fishermen would represent an out of pocket expense that could force fishermen out of business and reduce profitability of other fishermen at the worst possible time. Earlier this year, I requested funding that would allow NOAA to continue to pay the costs of at-sea monitoring for Massachusetts fishermen. I ask that you agree to use \$7.5 million that was included in the NOAA within the Senate FY 2012 Commerce, Justice and Science Appropriations bill to continue paying the at-sea monitoring costs for our fishermen for another year. I request that you continue to work with me to lower the costs of at-sea monitoring and identify new techniques and solutions.

Sixth, earlier this year the National Marine Fisheries Service (NMFS) released the Touchstone report which shows that fisheries management in New England is beset with problems and challenges that have been exacerbated by changes in regulations. The report shows distrust in the science and distrust in the research funding process. For example, the report says data gathering and analysis in the implementation of Amendment 16 was riddled with problems and resulted in mistakes in fish allocation that negatively impacted certain members of the fleet. As a step toward improving the relationship with our fishermen, would you ask those who developed the Touchstone report to develop an independent follow up report, which includes a participatory review process with our fishermen, to develop recommendations on the appropriate federal response to the Touchstone report?

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Seventh, I appreciate the efforts you have taken to help to stop the abuse and the intimidation of our fishermen which has led to the return of more than \$600,000 in unnecessary fines. A new issue relating to the incentives of NOAA law enforcement has come to my attention. I am concerned that a NOAA Office of Law Enforcement policy may have become an unintentional incentive in support of overzealous enforcement and excessive fines on our fishermen. Will you evaluate any policies within NOAA to make sure that promotions are not based primarily on the volume of cases or the size of penalties? Also, after recently receiving an update on the enforcement issue, I reiterate my previous request that you take every appropriate action to insure that those responsible for the abuse of our fishermen are punished.

Eighth, I have sent you two separate letters and have personally asked you to find some way to compensate Jim Keding given that he relied upon an incorrect landings history letter generated by National Marine Fisheries Service (NMFS) in the purchase of his vessel. Mr. Keding and his family are now facing serious financial difficulty directly due to the incorrect landings history letter. Also, I have sent you two separate letters and personally requested that you reinstate Kevin Scola's swordfish permit. Mr. Scola inadvertently sent his swordfish renewal application to the Northeast Regional Office instead of the Southeast Regional Office. Unfortunately, his renewal application was never forwarded to the Southeast Regional Office nor was he ever given notice reminding him that his application has not been received as NMFS has done for his other permits. I find it difficult to understand why Mr. Scola's application was not forwarded and why NOAA has not taken a greater effort to help resolve this issue. Once again, I ask for your help to insure that Mr. Keding and Mr. Scola are not harmed due to bureaucratic mistakes made by NMFS. I want to underscore how personally important these cases are to me. No one has provided me with any evidence whatsoever to contradict Mr. Keding's and Mr. Scola's contention that clear mistakes by NMFS have done them economic damage. For those of us who believe in government but also believe in accountability, it is only common sense that we ensure that when such mistakes are made, people are made whole – that's ultimately how we maintain peoples' faith in government. We simply have to help these two fishermen.

Ninth, it is my understanding that the New England Fishery Management Council (NEFMC) Habitat Committee is working on an Omnibus Habitat Amendment in conjunction with the NEFMC Groundfish Committee. It is my hope and expectation that the new Omnibus Habitat Amendment will eliminate some of the areas that are currently off limit to fishing which no longer have relevance under the current Hard TAC management system. Specifically, the removal of Closed Areas 1 and 2 on Georges Bank would aid the offshore fleet while lifting the Western Gulf of Maine Closure is vital to protecting the inshore fleet. Additionally, it is critically important that fishing grounds of economic significance, like Stellwagon Bank, are preserved as historic fishing grounds when considering the expansion of Essential Fish Habitats. I request that you work with me to develop recommendations to preserve and increase fishing areas around Massachusetts that are currently off limits to fishing.

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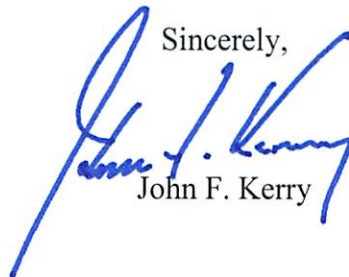
Tenth, another issue raised in the hearing was the requirement that the timeframe for rebuilding an overfished fishery not exceed 10 years. I very much appreciate you undertaking a National Academy of Sciences (NAS) review of this issue. We both agree that the environmental integrity of any plan is of utmost importance. However, as you yourself noted, the ten year rebuilding requirement is not based on science. I ask you to work with me to see if there is any flexibility within the Magnuson-Stevens Act to ensure the environmental integrity of a fishery management plan while simultaneously allowing greater flexibility for our fishermen. I look forward to working with you to provide additional regulatory flexibility that will help more fishermen stay in business while continuing on the path to a sustainable fishery.

Finally, I request that you provide \$1 million within the FY 2012 funds appropriated in NOAA's Oceanic and Atmospheric Research account or any other account you believe to be appropriate to fully study the effectiveness and applicability of Ocean Acoustic Waveguide Remote Sensing or OAWRS. As you know, peer-reviewed studies of OAWRS have shown that the method has the potential to vastly outperform current trawl surveys. While questions remain about whether this system can differentiate between species, it is crucial that we determine the full capabilities of this method. The lack of appropriate data is a major problem facing our fisheries and any technological advances should be thoroughly evaluated for potential benefits.

Once again, thank you for taking the time to travel to Boston to testify at the fishery field hearing. I cannot emphasize enough how important it was for the community to see and hear from you and your team in person. Now we must take that discussion and transform it into proactive and tangible steps forward.

Thank you in advance for your response to the questions included in this letter and for meeting with me and my staff very quickly. Given the economic circumstances of our fishing community, time is of the essence.

Sincerely,

A handwritten signature in blue ink, appearing to read "John F. Kerry". The signature is stylized and fluid, with a long, sweeping underline that extends to the left and then curves back under the name.

John F. Kerry