

Congress of the United States

Washington, DC 20515

June 16, 2011

Senator John D. Rockefeller
Chairman
Senate Committee on Commerce, Science and Transportation
508 Dirksen Senate Office Building
Washington, DC

Dear Chairman Rockefeller:

As you may know, we have the privilege of representing coastal communities in Massachusetts, including Gloucester and New Bedford, among other cities and towns, which fishermen call home. Ensuring that our fishermen can continue to sustain their livelihood and provide for their families has been and continues to be a top priority of ours in Congress.

Unfortunately, the fishing community continues to endure numerous challenges and economic hardships. For years, we, along with many of our colleagues, have attempted to work with the Department of Commerce in support of our fishermen, but our efforts have been met with repeated opposition and resistance.

We are aware that, as part of the Senate's confirmation process, Mr. John Bryson, the President's nominee to be the Secretary of Commerce, will soon appear before the Committee on Commerce, Science and Transportation ("the Committee"). At Mr. Bryson's hearing, we believe he must commit to bringing a fresh perspective and renewed sense of fairness to issues impacting the fishing community.

Specifically, there are several important areas warranting Mr. Bryson's on-the-record opinion that we wanted to respectfully bring to your attention:

Authority to Raise Catch Limits

On October 14, 2010, Commerce Secretary Locke sent a letter in which he wrote that he was "prepared to issue an emergency regulation to revise catch limits whenever there is both sufficient economic and sound scientific data to support such an emergency regulation."¹

Subsequently, Massachusetts Governor Deval Patrick and the Massachusetts Division of Marine Fisheries, in coordination with the Massachusetts School of Marine Science and Technology through the Massachusetts Marine Fisheries Institute, issued "A Report on Economic and Scientific Conditions in the Massachusetts Multispecies Groundfishery" on November 5, 2010.²

This report seemed to make clear that an economic emergency existed and required immediate action. The report demonstrated that there was scientific justification to "raise catch limits by at

¹ Letter from U.S. Department of Commerce to Representative John Tierney. October 14, 2010.

² Massachusetts Marine Fisheries Institute: A Report on Economic and Scientific Conditions in the Massachusetts Multispecies Groundfishery. November 5, 2010.

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least 30% for most species, and significantly more for some, while still remaining within conservation bounds.” Further, the analysis found “approximately \$19 million of foregone economic opportunities in Massachusetts due to catch limits that were set at the lowest end of allowable ranges.”

We joined with some of our Massachusetts colleagues in the U.S. House of Representatives and the U.S. Senate in supporting Governor Patrick’s request that the Secretary use his authority to act swiftly to issue emergency regulations revising catch limits to higher levels that remain consistent with conservation requirements.³

On January 7, 2011, the Secretary responded with a denial of this emergency request. We continue to be disappointed in this decision and believe the Secretary was provided sufficient scientific and economic data to support an increase in catch limits.

It is imperative for Mr. Bryson to clearly articulate the circumstances under which he would issue emergency regulations. Additionally, Mr. Bryson should state his interpretation of Magnuson-Stevens Fisheries and Conservation Management Act as it relates to how much economic data should factor into the implementation of the catch share program.

Economic Assessments:

The above-mentioned report also provided data which showed the consolidation of the small boat fishing fleets. According to the data available at the time of the report, of the 385 Massachusetts groundfish boats that had joined sectors, 56% had not yet been active in the fishery in 2010. This compares to 46% inactive at the same time the previous year. Additionally, the report states, “a comparison of 2010 Annual Catch Entitlements (ACE) to actual landings in recent years shows as much as two thirds of fishing permits were allocated 50%-60% less than their 2007-2009 average annual harvest. This reduction in allocation represents lost revenue of \$21 million for this portion of permit holders.”⁴

A congressional request was made as a result of the data in the report, and the subsequent decision by the Secretary in January not to raise catch limits, for an Economic Development Assessment Team (heretofore referred to as “the Team”) to be sent to areas up and down the coast to assess and evaluate all options to provide economic assistance to the fishing communities negatively impacted by the implementation of Amendment 16.⁵

³ Letter to Secretary of Commerce from Senators Kerry and Brown and Representative Frank, Tierney and Delahunt. November 18, 2010.

⁴ Massachusetts Marine Fisheries Institute: A Report on Economic and Scientific Conditions in the Massachusetts Multispecies Groundfishery. November 5, 2010.

⁵ Letter from Representatives Tierney, Markey, Frank and Keating to Secretary Gary Locke. March 17, 2011.

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As a result, the Secretary deployed the Team to Gloucester on May 2-4, 2011 and New Bedford on May 4-6, 2011. To date, there has not been any recommendation or analysis completed on the information and data collected at these meetings.

Given the importance of addressing the economic impact of the catch share system, it is critical for Mr. Bryson to commit to completing an analysis, with directive action, of the Team's findings and agree to making such information available to Congress and the public.

Along these lines, Mr. Bryson should affirm that he will continue to provide financial assistance to negatively affected fishing communities. Specifically, we believe Mr. Bryson should outline specific action he plans to initiate to provide fishermen relief from the burden of onerous regulation, similar to that which Secretary Locke provided in the two-year delay of the requirement for the fishing industry to cover the costs of dockside monitoring.

Asset Forfeiture Fund:

As you may be aware, the Department of Commerce Inspector General (IG) has issued several reports in the past 18 months that have highlighted common abuses and misuses of power, as well as rampant mismanagement throughout the agency, specifically in the Office of Law Enforcement (OLE) in the Northeast region. Specifically, the IG found "weak internal controls" over NOAA's Asset Forfeiture Fund (AFF).

Due to the lack of information available to the IG during the initial investigation, the agency conducted a follow-up report specifically on the AFF, issued on July 1, 2010 entitled, "Review of NOAA Fisheries Enforcement Asset Forfeiture Fund." The findings showed that "NOAA has administered the AFF in a manner that is neither transparent nor conducive to accountability, thus rendering it susceptible to both error and abuse."⁶

While NOAA has taken some corrective action to address the findings of the report as it relates to the AFF, one important thing remains unclear: how NOAA has used the funds since the report was released. In August of 2010, NOAA confirmed a balance of \$8.4 million in the AFF. In March of 2011, NOAA initiated an audit to be completed this month.

NOAA has stated that "ensuring that the monies in the AFF are properly accounted and used is essential to carrying out our duties as responsible managers of federal dollars."⁷

⁶ Memorandum from U.S. Department of Commerce Office of Inspector General to Dr. Jane Lubchenco: Review of NOAA Fisheries Enforcement Asset Forfeiture Fund. July 1, 2010.

⁷ Memorandum from Dr. Jane Lubchenco: Corrective Actions to Restore the Financial Integrity of the National Marine Fisheries Service (NMFS) Enforcement Asset Forfeiture Fund. July 8, 2010.

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Mr. Bryson should commit to continuing to audit the AFF to ensure the monies collected through fines issued by OLE officials are used appropriately and inform Congress and the public on the results of the audit.

Further, under current NOAA policy, there is authority to use monies from the AFF for the following purposes, among others: rewards of not less than 20% of the penalty collected or \$20,000, whichever is the lesser amount, for information related to enforcement actions; expenditures directly related to specific investigations and enforcement proceedings; and reimbursement to other Federal or State agencies for enforcement related services provided pursuant to an agreement entered into with NOAA.⁸

Mr. Bryson should indicate if he agrees or disagrees that allowing the use of AFF monies for this purpose could be a conflict of interest between OLE officials and the fishing industry that the OLE regulates. Mr. Bryson should make clear whether he believes the current NOAA AFF policy appropriately addresses the errors and abuses cited in the aforementioned July IG report.

Finally, for the first time, NOAA included the AFF in its annual budget submission for Fiscal Year 2012. Presumably, this will be a practice that will continue in the years ahead. However, Mr. Bryson should confirm that this kind of disclosure related to the AFF will be included in future budgets.

Improving Relationships with Fishermen:

As the initial IG report made clear, there is a “highly-charged regulatory climate and dysfunctional relationship between NOAA and the fishing industry—particularly in the Northeast Region.”⁹

One of the IG’s recommendations included in this report was for NOAA to consider “reestablishing the position of ombudsman to serve as an interface with the regulated industry; such a position was created in May 1999, but has remained vacant for several years and it is unclear within NOAA whether the position still exists.”

NOAA has not yet reestablished this position. The agency did, however, establish an e-hotline for enforcement related complaints in September 2010 and named former commercial fisherman, Don Frei, to the newly created position of Compliance Assistance Liaison to continue outreach to the industry in the Northeast in April 2011.

⁸ National Oceanic and Atmospheric Administration Policy on Prohibited and Approved Uses of the Asset Forfeiture Fund. March 16, 2011.

⁹ U.S. Department of Commerce Office of Inspector General: National Oceanic and Atmospheric Administration Review of NOAA Fisheries Enforcement Programs and Operations. Final Report No. OIG 19887. January 2010.

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Mr. Bryson should indicate if he agrees or disagrees with the IG that NOAA needs an ombudsman to ensure that NOAA leadership regularly addresses and provides input to enforcement priorities and strategies with regional management, including formal reporting protocols. Similarly, Mr. Bryson should make clear his intentions on whether the e-hotline and Compliance Assistance Liaison position will continue. Mr. Bryson should be willing to commit to increasing personnel dedicated to directly addressing fishermen's concerns, if that is deemed necessary.

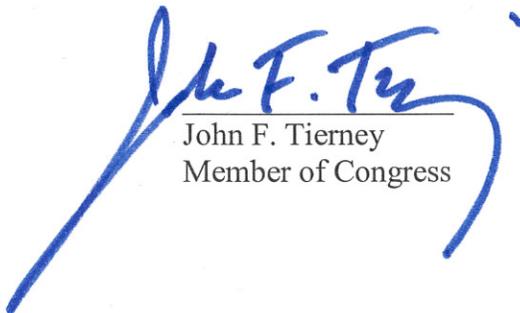
Conclusion:

If he is confirmed, Mr. Bryson will be the Secretary of Commerce at a critically important time for the fishing industry. As we trust the foregoing evidences, there is sufficient interest in these issues and a commitment to ensuring fishermen and their families are treated with fairness. Congress must expect the same of the Secretary of Commerce.

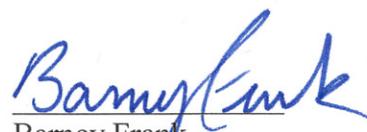
We appreciate the challenges with appropriately scrutinizing presidential nominations, and we hope you will consider the above-mentioned items as a respectful contribution to the Committee's constitutional process.

Thank you for your attention and please do not hesitate to contact us should you wish to discuss the aforementioned issues further.

Sincerely,



John F. Tierney
Member of Congress



Barney Frank
Member of Congress