



Massachusetts Lobstermen's Association

8 Otis Place ~ Scituate, MA 02066
781.545.6984

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Submitted via: ombudsman@sba.gov

Office of the National Ombudsman
U.S. Small Business Administration

Re: Support for H.R. 9436 – Northeast Lobstermen Protection Act / North Atlantic Right Whale Regulatory Extension Act & Request for Consideration of Small Business Regulatory Burden, Uneven Enforcement, and Use of Federally Funded Right Whale Data

Dear National Ombudsman:

On behalf of the more than 1,800 members of the Massachusetts Lobstermen's Association (MLA), I respectfully submit this letter in support of H.R. 9436, introduced by Representative Michael Lawler and supported by Representative Jared Golden, which would extend the existing regulatory framework established under the Consolidated Appropriations Act, 2023 concerning the North Atlantic right whale through 2035.

We are submitting these comments not only in support of the legislation, but also to bring to the attention of the Office of the National Ombudsman serious concerns regarding the cumulative regulatory burden being placed on Massachusetts' small commercial fishing businesses, the need for agencies to fully utilize the extensive data and research funded by Congress, and concerns regarding the consistency, proportionality, and fairness of federal regulatory enforcement affecting our members.

The Office of the National Ombudsman was established under the Small Business Regulatory Enforcement Fairness Act to provide small entities with an independent avenue to raise concerns regarding federal agencies, including excessive or uneven regulatory enforcement, inspections, compliance activities, and problems with existing federal regulations or guidelines. These concerns are particularly relevant to Massachusetts' commercial lobstermen, who operate overwhelmingly as small, independently owned businesses and have experienced a significant accumulation of federal and state regulatory requirements associated with North Atlantic right whale conservation. ([Small Business Administration](#))

Background of the Massachusetts Lobstermen's Association

Established in 1963, the Massachusetts Lobstermen's Association is a member-driven organization representing more than 1,800 commercial fishermen and fishing-related businesses throughout Massachusetts and the broader New England region.

For more than six decades, the MLA has worked collaboratively with the Massachusetts Division of Marine Fisheries, the Atlantic States Marine Fisheries Commission, the National Marine Fisheries

Service, NOAA, legislators, scientists, and other stakeholders to ensure that marine resource conservation and the economic sustainability of our commercial fishing communities remain compatible goals.

Massachusetts lobstermen are not opposed to conservation. Quite the opposite is true. Our members have repeatedly demonstrated their willingness to change fishing practices, modify gear, participate in cooperative research, adopt new technologies, accept area and seasonal restrictions, and incur substantial financial costs when credible scientific evidence demonstrates that those measures are necessary and effective.

The issue before us is whether additional regulatory restrictions should be imposed before the measures already implemented have been given sufficient time to be evaluated using the substantial amount of data and research that Congress has directed federal agencies to collect.

Support for H.R. 9436

The MLA strongly supports H.R. 9436 because it provides the time necessary for science, monitoring, research, and stakeholder input to catch up with the regulatory schedule.

The Consolidated Appropriations Act, 2023 established an important regulatory framework under which the existing Atlantic Large Whale Take Reduction Plan measures were deemed sufficient for continued federal and state authorization of the American lobster and Jonah crab fisheries through December 31, 2028. The law also directed federal agencies to pursue research, innovative fishing technologies, and conservation assistance intended to improve the scientific and technological foundation for future management decisions. ([Justia Law](#))

H.R. 9436 would extend this framework through 2035. The House Natural Resources Committee approved the legislation in July 2026 by a bipartisan 22-13 vote, and the legislation is now moving toward consideration by the full House. ([Representative Jared Golden](#))

This extension is not a request to eliminate whale protections. It is a request to allow the existing protections to remain in place while the federal government completes the scientific work Congress has already directed it to undertake.

Congress Has Already Invested Substantial Federal Resources in the Science and Technology

A particularly important consideration for the National Ombudsman is the substantial federal investment that has been made to improve understanding of North Atlantic right whales, fishing gear interactions, whale distribution, and potential technological alternatives.

Congress did not simply postpone regulations in 2023. Congress also established a Conservation and Mitigation Assistance Grant Program designed to fund projects intended to reduce lethal and sublethal effects of human activities on North Atlantic right whales. The program was authorized through FY2032, with Congress identifying innovative gear deployment and technology as a major priority. ([GovInfo](#))

Federal funding has subsequently supported research into whale distribution, acoustic monitoring, fishing gear technologies, on-demand or "ropeless" systems, gear modifications, and other approaches intended to reduce risk while maintaining viable commercial fisheries.

This investment represents an important public policy commitment. **The data generated through these federally funded programs should not simply be collected and then disregarded when regulatory decisions are made.**

The federal government has an obligation to use the best available information generated through these investments when determining whether additional restrictions are necessary, whether existing measures are working, where risk is actually occurring, and whether proposed regulatory measures are proportional to the demonstrated risk.

The MLA therefore respectfully asks the Office of the National Ombudsman to recognize the importance of ensuring that **all relevant federally funded data are incorporated into the regulatory decision-making process before additional economic burdens are imposed on small fishing businesses.**

The Importance of Using the Data Being Collected

The purpose of investing in scientific research and innovative technology is to improve decision-making.

If Congress provides substantial federal resources to identify where right whales are located, when they are present, how their distribution changes, how fishing gear interacts with whales, how different gear configurations affect entanglement risk, and whether alternative technologies can reduce that risk, those results should become an integral part of the regulatory process.

Data should not be selectively used only when they support additional restrictions.

The MLA believes that the same standard must apply to data that demonstrates:

- where right whales are actually being observed;
- where right whales are not being observed;
- the seasonal and geographic distribution of right whales;
- actual documented entanglement events;
- the origin and configuration of gear involved in confirmed entanglements;
- the frequency and severity of confirmed interactions;
- changes in fishing effort and gear configuration;
- the effectiveness of weak rope and weak-link requirements;
- the effectiveness of seasonal and geographic closures;
- the results of on-demand and other innovative fishing technologies;
- actual participation and success rates in experimental gear programs;
- changes in whale population abundance and distribution;
- changes in prey availability and oceanographic conditions;
- and the economic consequences of regulatory measures on small fishing businesses and the communities that depend upon them.

This is particularly important because the D.C. Circuit has previously found that scientific decision-making concerning the lobster fishery could not properly rely upon speculative assumptions or worst-case scenarios in place of empirical judgment. In *Maine Lobstermen's Association v. National Marine Fisheries Service*, the court emphasized that the agency's role is to form a scientific judgment and that uncertainty does not authorize the distortion of the decision-making process through highly speculative assumptions. ([Justia Law](#))

That decision underscores the importance of allowing additional time for actual data to be collected, evaluated, validated, and incorporated into future management decisions.

Existing Conservation Measures Must Be Given an Opportunity to Demonstrate Their Effectiveness

Massachusetts fishermen are currently operating under extensive conservation requirements designed to reduce potential interactions with protected whales.

These measures have included seasonal restrictions, restricted areas, changes in trawling configurations, gear marking requirements, weak links and weak rope requirements, limitations on buoy lines, and other operational requirements.

Each requirement has an economic consequence.

For a large corporation, an additional regulatory requirement may be absorbed as another operating expense. For an independent commercial fishing vessel, the same requirement can mean thousands or tens of thousands of dollars in additional equipment, lost fishing time, additional fuel consumption, reduced access to traditional fishing grounds, increased operational complexity, increased safety concerns, and reduced revenue.

The cumulative effect must therefore be considered.

It is not appropriate to evaluate each regulation in isolation while ignoring the combined burden of multiple restrictions imposed on the same small business.

Concerns Regarding Excessive or Uneven Regulatory Enforcement

The MLA also asks the National Ombudsman to examine concerns regarding excessive, inconsistent, or uneven enforcement of federal requirements affecting commercial fishermen.

Our members operate in a highly regulated environment and understand the importance of compliance. We are not asking for special treatment or exemption from legitimate enforcement.

We are asking for **consistent, transparent, proportionate, and equitable enforcement.**

Commercial fishermen frequently operate under complex overlapping federal and state regulatory requirements. Differences in how regulations are interpreted, communicated, inspected, or enforced can create significant uncertainty for small businesses.

The National Ombudsman specifically identifies excessive or uneven regulatory enforcement actions, audits, inspections, compliance assistance activities, and other enforcement-related contacts by federal agencies as appropriate subjects for small-entity comments. ([Small Business Administration](#))

The MLA believes that these concerns warrant consideration in the broader right whale regulatory process.

Enforcement Must Be Consistent With the Regulatory Purpose

Enforcement should be focused on achieving the conservation objective—not simply generating violations.

Where a fisherman has made a good-faith effort to comply with complicated and frequently changing requirements, agencies should consider whether education, compliance assistance, warnings, or corrective measures are more appropriate than punitive enforcement.

Likewise, enforcement should be based on consistent standards across geographic areas, fishing sectors, vessel sizes, and jurisdictions.

If one group of fishermen is subject to aggressive enforcement while similarly situated fishermen operating under substantially similar conditions are treated differently, the result is not only unfair; it undermines confidence in the regulatory system.

Small businesses cannot reasonably plan their operations when regulatory requirements are interpreted or enforced inconsistently.

Enforcement and Regulation Should Be Based on Actual Risk

The MLA further believes that regulatory enforcement should correspond to demonstrated conservation risk.

Where data show that whales are absent from a particular area during a particular period, that information should be considered when determining whether continued restrictions are necessary.

Where data show that a particular gear configuration has substantially reduced risk, that information should be incorporated into management decisions.

Where an experimental technology has failed to demonstrate sufficient reliability, safety, or operational feasibility, that information must also be considered before requiring widespread adoption.

The objective should be **risk reduction—not regulation for regulation's sake**.

This distinction is particularly important for Massachusetts fishermen because the economic consequences of unnecessarily restrictive regulations can be permanent. A fisherman who loses access to traditional fishing grounds, cannot afford required equipment, or is forced to leave the industry cannot simply return when a regulation is later determined to have been unnecessary.

Economic Data Must Be Considered Alongside Biological Data

The regulatory process must also adequately account for the economic impact on small entities.

NOAA's own regulatory analyses have recognized that lobster and Jonah crab fisheries affect thousands of vessels and coastal communities throughout the Northeast. Previous federal analyses have identified significant economic effects in Massachusetts and Rhode Island communities associated with these fisheries. ([NOAA Fisheries](#))

The true economic impact extends far beyond the individual permit holder.

When a commercial fishing vessel reduces effort or leaves the fishery, the consequences can extend to:

- crew members;
- bait suppliers;
- gear manufacturers;
- rope suppliers;
- fuel providers;
- ice suppliers;
- seafood dealers;
- processors;
- truckers;
- marine mechanics;
- boatyards;
- insurance providers;
- restaurants;
- wholesalers;
- retailers; and
- other working-waterfront businesses.

Therefore, the economic impact of regulation should not be measured solely by the immediate revenue loss experienced by an individual vessel.

The Need for a Full Accounting of Federally Funded Research

The MLA respectfully requests that, before additional federal restrictions are developed or enforced, NOAA Fisheries and other responsible agencies conduct a comprehensive review of all relevant data produced through federally funded right whale programs since enactment of the Consolidated Appropriations Act, 2023.

That review should include, at a minimum:

1. **All right whale sightings and distribution data;**
2. **Passive acoustic monitoring and aerial survey data;**
3. **Confirmed entanglement data and the origin of identified gear;**
4. **Gear configuration and breaking-strength information;**
5. **Fishing effort and gear-density data;**
6. **Population abundance and demographic information;**
7. **Whale behavior and seasonal distribution;**
8. **Oceanographic and prey-distribution information;**
9. **Actual effectiveness of existing regulatory measures;**
10. **Compliance and enforcement data;**
11. **Economic impacts on small fishing businesses; and**
12. **Safety impacts associated with alternative gear and proposed regulations.**

The information should then be evaluated as a complete body of evidence rather than through isolated datasets.

The Regulatory Clock Should Not Outrun the Scientific Process

The MLA is particularly concerned that the regulatory timeline could result in agencies being forced to make major decisions before the full body of federally funded research is available for meaningful analysis.

This concern has already been recognized by policymakers and state resource agencies. In supporting an extension of the regulatory pause, Maine officials have noted that important data streams are still being gathered and that a compressed regulatory timeline could prevent some of those data from being incorporated into decision-support tools. ([Representative Jared Golden](#))

That is precisely the concern of Massachusetts fishermen.

If the federal government has invested millions of dollars in developing better information, then the government should take the time necessary to use that information correctly.

A regulatory deadline should never become more important than the quality and completeness of the science used to justify the regulation.

H.R. 9436 Provides a Responsible Path Forward

H.R. 9436 provides the necessary time to complete this process.

Extending the existing framework to 2035 would:

- preserve the conservation protections currently in place;
- prevent regulatory uncertainty caused by repeatedly changing requirements;
- allow additional years of scientific monitoring;
- allow federally funded research to mature;
- provide time to evaluate innovative fishing technologies;
- allow agencies to determine which conservation measures are actually producing measurable benefits;
- provide additional time to evaluate economic and safety impacts;
- allow stakeholders to participate meaningfully in the regulatory process; and
- ensure that future regulations are based on the best available scientific and economic information.

This is consistent with the principles of adaptive management.

Adaptive management requires managers to establish measures, monitor outcomes, evaluate results, and adjust management based upon what the evidence demonstrates.

It does not mean automatically imposing additional restrictions whenever uncertainty exists.

Massachusetts Fishermen Should Not Be Required to Bear the Cost of Scientific Uncertainty

Our members have already made substantial investments to comply with federal and state conservation requirements.

They should not be required to make additional investments based upon assumptions that can be tested through data that are already being collected.

Nor should small businesses be forced to absorb the economic consequences of regulatory decisions when the government has not yet fully evaluated whether existing measures are achieving their intended objectives.

The fishermen we represent want the North Atlantic right whale to recover.

They also want their businesses, families, communities, and working waterfronts to survive.

Those objectives are not mutually exclusive.

In fact, the most durable conservation policies will be those that fishermen believe are based on sound science, accurately reflect actual risk, are fairly enforced, and allow fishermen to participate meaningfully in developing solutions.

Request to the National Ombudsman

For these reasons, the Massachusetts Lobstermen's Association respectfully requests that the Office of the National Ombudsman:

1. **Recognize the substantial regulatory burden being placed on Massachusetts' small commercial fishing businesses;**
2. **Review concerns regarding excessive, inconsistent, or uneven federal regulatory enforcement affecting commercial fishermen;**
3. **Encourage federal agencies to provide consistent and transparent compliance and enforcement standards;**
4. **Encourage NOAA Fisheries to fully incorporate federally funded research and monitoring data into future regulatory decisions;**
5. **Encourage agencies to distinguish documented risk from assumptions and modeled worst-case scenarios;**
6. **Encourage agencies to evaluate the cumulative economic and operational impacts of multiple regulations on individual small businesses;**
7. **Encourage meaningful consideration of actual economic and safety impacts when evaluating proposed conservation measures;**
8. **Support a regulatory process that allows sufficient time for existing conservation measures to be evaluated; and**
9. **Support the objectives of H.R. 9436 and the extension of the current regulatory framework through 2035.**

Conclusion

Massachusetts lobstermen have never asked for the North Atlantic right whale to receive less protection.

They are asking for something far more reasonable: **that conservation policy be based on the best available science, that federally funded data actually be used, that existing measures be given a reasonable opportunity to demonstrate their effectiveness, that economic and safety impacts be honestly evaluated, and that federal regulations be enforced fairly and consistently.**

Congress has already recognized the importance of providing time for research, innovation, and improved data collection. The substantial federal investment made in North Atlantic right whale conservation and fishing technology represents an important opportunity to move beyond assumptions and toward a more precise understanding of actual risk.

That investment should not be wasted by rushing to impose additional regulations before the information it was intended to produce has been fully analyzed.

The Massachusetts Lobstermen's Association believes that protecting the North Atlantic right whale and protecting America's historic commercial fishing communities are compatible objectives. Achieving both requires patience, transparency, sound science, adaptive management, meaningful stakeholder participation, and regulatory fairness.

H.R. 9436 provides Congress and the agencies with the time necessary to accomplish that goal.

We respectfully urge the Office of the National Ombudsman to consider these concerns as part of its mission to protect small entities from excessive or uneven federal regulatory enforcement and to ensure that small businesses have a meaningful voice in the federal regulatory process.

The Massachusetts Lobstermen's Association appreciates your consideration of these concerns and respectfully requests that this letter be included in the Office's consideration of the regulatory impacts being experienced by Massachusetts commercial fishermen.

Sincerely,

Beth Casoni

Executive Director