



Massachusetts Lobstermen's Association

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Sent via: USPS –Certified Mail

President Donald J. Trump
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20230

Dear Mr. President,

On behalf of its 1800 members, the Massachusetts Lobstermen's Association (MLA) respectfully submits this letter of great concern and unease on a multitude of issues that the commercial lobster industry in Massachusetts is facing; the ongoing right whale litigation, the Canada-European and China Tariffs, and the National Marine Monument. These are all equally critical issues that are wreaking havoc on the commercial lobster industry causing great concern and economic uncertainty for the future of the commercial lobster industry here in Massachusetts.

The Massachusetts commercial lobster industry is a historic and iconic part of our community in the Commonwealth which is being threatened by more than right whale litigation. Every day the commercial lobster industry is faced with market uncertainty due to the ongoing tariffs on exports, lobsters being imported free and clear of tariffs bringing down the domestic lobster prices, as well as the archaic laws that are working against each other all the while burdening the hard-working men and women in the commercial lobster industry.

Established in 1963, the MLA is a member-driven organization that accepts and supports the interdependence of species conservation and the members' collective economic interests. The MLA continues to work conscientiously through the management process with the MA Division of Marine Fisheries (MADMF), the Atlantic States Marine Fisheries and National Marine Fisheries Service to ensure the continued sustainability and profitability of all the resources in which our fishermen are engaged in.

The Massachusetts commercial lobster fleet is primarily made up of:

- State waters vessels are all owner/operator
- Fishermen tend to fish with one sternman or by themselves
- Vast majority of lobster fishing occurs between May and November
- The lobster pot limit is 800
- The average number of lobster pots fished for the fishery is <400
- Full time professional fishermen fish 800 lobster pots
- Gear is typically fished in "trawls" – 10 - 20 lobster pots on a string
- Trawl size is directly proportional to vessel length
- Gear is typically hauled and re-baited every 3 to 5 days
- Fishermen haul between 100 and 400 lobster pots per day

The Massachusetts commercial lobster industry employs thousands of individuals who earn their living on the sea. In 2018, the 712 active MA commercial lobstermen in State Waters (0-3 miles) harvested 10,712,923 lbs. with an ex-vessel value of \$36,566,991 and an overall economic impact on the local economy of 234 million dollars while only fishing approximately 292,000 lobster pots.

Also, there are 75 active MA commercial lobstermen in Federal waters (3-200 miles) harvested 7,456,237 lbs. with an ex-vessel value of \$36,566,991 and an overall economic impact to the local economy of 165 million dollars while only fishing 111,000 lobster pots. The total economic impact of the collective commercial lobster fleet in Massachusetts is 399 million dollars to the local economy and we need your help today to keep them fishing.

Right Whale Litigation Overview

Boston, MA

On April 30, 2020, the court Order given was a death sentence to the commercial lobster industry and fixed gear fisheries, not just in the Commonwealth, but the entire United States of America by putting an unrealistic timeline to acquire the Incidental Take Permit (ITP) mandating that the *“Plaintiff may renew his motion for an injunction..if Defendants have not obtained an Incidental Take Permit within ninety (90) days of this Order.”* (Case 1:19-cv-10639-IT)

With all due respect to the courts’ process and thoroughness in citing and referencing scores of case law and documents in the Order, we are extremely alarmed that the court did not research the ITP process and ruled that 90 days was sufficient to acquire the mandatory ITP.

The oversight and lack of research reflects poorly on the courts ability to fully understand the nuances of acquiring the ITP further adding insult to injury as the commercial lobstermen and fixed gear fisheries contemplate setting out their gear this year.

The implications of this Order, should the goal be reached by the Plaintiff, will be the end to the entire fixed gear fisheries as we know it today, and it will all have stemmed from this Order right here in the Commonwealth. We do not want this to be the end of an era when our commercial fishermen are doing more than anyone, anywhere in the world, to save these animals.

On July 29, 2020 Document 211 was file (Commonwealth) Civil Action No. 19-cv-10639-IT - RICHARD MAX STRAHAN, Plaintiff v. SECRETARY, MASSACHUSETTS EXECUTIVE OFFICE OF ENERGY ENVIRONMENTAL AFFAIRS, et al., “Defendants Secretary of the Massachusetts Office of Energy and Environmental Affairs and Director of the Massachusetts Division of Marine Fisheries hereby move for a stay of further proceedings in this case until the process required by the Court’s April 30, 2020, Order is completed.....A stay will promote judicial economy and orderly proceedings, allow the Massachusetts Defendants to devote their scarce resources conservation planning in accordance with the Act, and no party will be prejudiced.” <https://lobstermen.com/wp-content/uploads/2020/08/Mtn-to-Stay.pdf> Max Strahan immediately filed an Opposition to Motion to Stay Further Proceedings on 8/12/2020

Over the last several months very concerned MLA members and commercial fishermen alike have been calling wanting to know if they will be able to go to work or will they be out of a job? Their concerns are real, and we need your help to bring together our state and federal agencies and the state and federal delegations to come up with an unyielding and unified position for an appeal to contest the unrealistic timeline set by the April 30th court Order.

Massachusetts Commercial Lobstermen's Ongoing Conservation Efforts

The Massachusetts commercial lobstermen and MLA have been actively engaged in the conservation of right whales for over 30 years and remain committed to staying the course.

Timeline

1935- International ban on hunting whales goes into effect
1970- North Atlantic Right Whales listed as endangered
1996- NOAA implements the Large Whale Take Reduction Plan
1997-MA requirement for “breakaway” features in gillnets and trap/pot buoy lines
Seasonal ban in Cape Cod Bay for gillnets and on use of floating rope between pots
1997-Dedicated aerial surveys begin in Cape Cod Bay
2004 – Year-round ban on floating rope between traps in Cape Cod Bay
2007 - Year-round ban on use of floating rope between traps statewide
2014- MA Restricted Area is created – A three-month closure Feb-April to 3,071 sq. miles
2015 - 3-month (Feb/Apr) closure to all pots/traps in the MA Restricted Area
2016 – 3-month (Feb/Apr) closure to all pots/traps in the MA Restricted Area
2017 – 3-month (Feb/Apr) closure to all pots/traps in the MA Restricted Area **PLUS** 4-day extension of the gear closure in Cape Cod Bay
2018 - 3-month (Feb/Apr) closure to all pots/traps in the MA Restricted Area **PLUS** a 15-day extension of the gear closure and speed restriction (10 mph) for small vessels in Cape Cod Bay
2019- 3-month (Feb/Apr) closure to all pots/traps in the MA Restricted Area
2020 - 3-month (Feb/Apr) closure to all pots/traps in the MA Restricted Area, MLA members deploy 700 coils of whale safe 1700lb weak red rope.

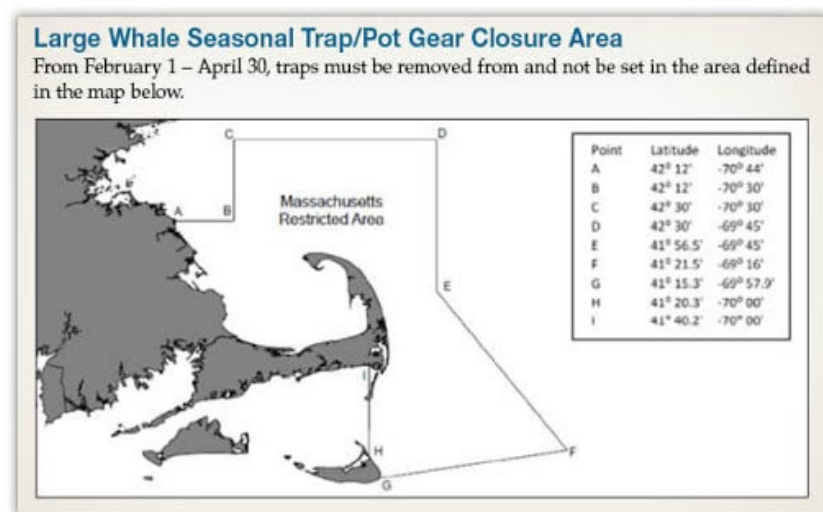
2021

2022

2023

2024

MA Restricted Area Closure



The Massachusetts commercial lobstermen have endured much of the draconian whale conservation management over the last several decades since the inception of the Critical Habitat in 1994 and most recently the implementation of the 3-month (Feb/April) closure to all pots/traps in the MA Restricted Area. Currently, there are over 3,000 square miles closed to lobster fishing, removing ALL the vertical lines when the right whales are present and feeding, leaves ZERO chance of an interaction or entanglement.

The MADMF through their swift ability to implement and rescind Dynamic Area Management (DAM) have implemented this for additional whale conservation when there were high aggregations of Right Whales in Cape Cod Bay after NMFS lifted the closure. The DAM measures through the extension of

the MA Restricted Area closure by the MADMF are working and the right whales can come to the waters of the Commonwealth and feed and leave very much alive. The unfortunate events that happened in Canadian waters have now become our responsibility and Massachusetts commercial lobstermen continue to bear the brunt of these lawsuits.

Vertical Line Reductions Underway

It is no secret that MADMF has decades of data to back up the ongoing reduction of the lobster fishery here in Massachusetts with a 100% MANDATORY reporting they can show the downward effort trend for the MA lobster fleet. Currently, in Massachusetts there are less than 750 active lobstermen fishing an average of 480 pots and most of them are fishing 5-30 pot trawls with an estimated 20-25 permits retiring every year.

The MA lobster fishery in 2007 had 1,361 permits and as of 2018 there were 1,081 permits issued and 787 being fished as well as a reduction of 280 lobster permits with no new permits being issued. The commercial lobster industry in Massachusetts deploys approximately 80,000 vertical lines and the numbers are going down as new conservation management comes online in early 2021.

Ongoing Lobster Pot Reductions

Currently, Massachusetts lobstermen are still reducing effort through the ongoing lobster pot reductions in Lobster Management Area (LMA) LMA 2 and LMA 3 and these real numbers in reduction need to be quantified and given a conservation credit. Today there are approximately 72 active lobstermen in MA LMA 2 and approximately 60 active lobstermen in Outer Cape Cod (OCC). How much further can they be reduced in effort to remain whole when they are continually paying a conservation tax every time a tag is transferred. It should also be noted that; every transfer in LMA 2, LMA 3 and OCC there is also a 10% conservation lobster pot tax which also equates to even a further reduction in effort.

Ongoing Conservation Management and Gear Modifications

On March 6, 2020, the MADMF submitted the Commonwealths conservation proposal to reach the 60% conservation target set forth by the Atlantic Large Whale Take Reduction Team and NMFS. This proposal was taken out to Public Hearings for input from the industry and will further aid in the right whale's recovery. A conservation measure that is note worthy is the prohibition on the use of any lines greater than 3/8" for vertical lines in state waters, which was supported by the MLA.

The MLA and Lobster Foundation of Massachusetts were granted a Massachusetts Environmental Trust grant to develop a 1700lb weaker whale safer red rope which will be deployed this fishing season for field testing. The ropes 1700lb breaking strength basis came from the New England Aquariums Study *Effects of fishing rope strength on the severity of large whale entanglements* by Amy Knowlton et. al. where they "found entangled in tested rope strengths below 7.56 kN or 1700 lbsf, implementation of RBS ropes would likely reduce the probability of mortality and suffering" Kowlton et.al. As of July 2, 2020, the LFoM has distributed 700 plus coils of the 1700lb whale safer red rope to be field tested this year.

Ropeless Fishing is NOT REAL

Today, there is a lot of misperception on what can and can not be done in the commercial lobster fishery when it comes to the use of Ropeless fishing. Over the last 5 years or so, there has been a major effort to make it mandatory for the commercial lobstermen and fixed gear fishermen to transition over to ropeless gear to further save the right whales. Furthermore, this gear transition to ropeless is being pushed for year-round implementation when it's not needed as the 3-month closure is in effect when the right whales are present.

The sheer magnitude of the economic undertaking would be well over 150 million dollars to outfit the commercial lobster industry here in the Commonwealth the first year. The individual cost would be an estimated \$190,000 per fishermen to outfit their gear to go fishing. Not to mention there is an average of 10% gear loss each year and this would have to be replaced year in and year out and the gear loss would likely increase dramatically as the technology has yet to be tested on large scale multi disciplined fisheries. This transition would take hundreds of millions of dollars and decades to implement and outfit every commercial fishing vessel that is on the water.

The unintended consequences of gear conflicts between traditional and ropeless gear in the fisheries would be grave if not thought through to the end. Fixed gear commercial fishing and the mobile gear industry do not fish in one hypothetical box for a species and this is where the gear conflicts would be catastrophic given that the technology is not readily available, nor do individual brands talk to each other.

Here is a scenario for comparison when technologies do not communicate with each other; What would happen if AT & T, Verizon, Singular, Sprint, and Metro PCS cellphones did not communicate with each other? The consumers would have to carry several phones to stay connected. This is the same for the ropeless technology; they do not communicate with each other; Desert Star, Edge Tech, Lobster Lift, Smelts and more, do not interact with each other so each commercial fisherman would have to have multiple boxes, screens, and transducers on their vessel to see where all the gear is on the bottom.

Unfortunately, environmental groups like PEW and the International Fund for Animal Welfare continue to commission opinion based ropeless reports to help further their pecuniary gains when right whales continue to swim into unprotected waters in Canada. Saving right whales is a great way to raise capital while putting the hard-working commercial lobstermen out of business here in the United States of America.

Marine Mammal Protection Act

“Congress enacted the Marine Mammal Protection Act (MMPA) in 1972, due in part to the high level of dolphin mortality in the eastern tropical Pacific tuna fishery (estimated at more than 400,000 animals per year in the late 1960s).”

https://www.everycrsreport.com/reports/RL30120.html#_Toc229466607 *The MMPA has morphed so radically from its original charge to stave off the loss of 400,000 dolphins per year to becoming the nails in the coffin for every fixed gear fisherman in America. The MMPA was reauthorized in 1994, 26 years ago, and needs to be revamped to be a law that is sensible and attainable. Not a law that vilifies or demonizes our law-abiding commercial fishermen when the real problem lies out of the United States of Americas jurisdiction.*

The MMPA shifted all marine mammal management authorities to the federal government and from our experience at the Atlantic Large Whale Take Reduction Team meeting in 2019, the process failed even while consensus was nearly reached. Five months after the meeting, the State of Maine and the Maine Lobstermen's Assoc. withdrew their consensus vote leaving the rest of the lobster industry to face the consequences. We need your help to fix this problem, so we do not continue to waste valuable time and resources.

Endangered Species Act

“The Endangered Species Act (ESA) in 1973, it recognized that our rich natural heritage is of “esthetic, ecological, educational, recreational, and scientific value to our Nation and its people.” It further expressed concern that many of our nation's native plants and animals were in danger of becoming extinct” The commercial lobstermen here in the Commonwealth fish under the strictest conservation management rules anywhere in the world and yet they are still bearing the brunt of ALL the litigation rulings with no end in sight because of the ESA.

When the right whales visit the coast of Massachusetts from February through April, they are free to feed without incident. The ESA has continually worked against the commercial lobstermen for decades now even though they have been doing everything that has been asked of them to do, even the implementation of a 3-month closure to over 3,071 sq miles.

As we navigate through these uncharted waters without knowing what the feasibility is for the State to acquire an Incidental Take Permit and or what the outcome will be with *Center for Biological Diversity, et al. suit*. We remain hopeful that the ALL the elected officials will continue to fight on behalf of the hard-working men and women in the commercial lobster industry and fixed gear fisheries. These laws are archaic, and the process is broken. Please help us fix this today before it destroys the iconic and historic commercial lobster fishery here in the Commonwealth.

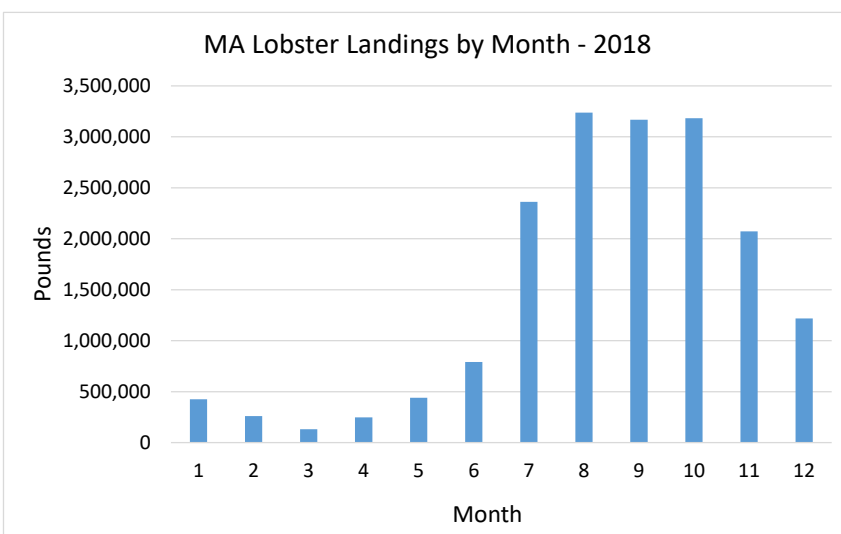
The MLA will be requesting through the Freedom of Information Act the 2010-2017 economics of the right whale recovery in the United States as millions of taxpayers’ dollars are spent annual as these animal’s travel into Canadian waters that have marginal protections in place that do not meet the standards of the United States.

Furthermore, the MLA **will be seeking help from Governor Charles Baker** to invoke the 1979 amendment to the ESA, “God Squad” to review the ESA and the right whale recovery efforts. The God Squad has the authority to exempt an agency action from the requirements of section 7(a)(2) of the ESA if the God Squad makes certain determinations. The God Squad is composed of seven members: the Secretary of Agriculture, Secretary of the Army, Chairman of the Council of Economic Advisors, Administrator of the Environmental Protection Agency, Secretary of the Interior, Administrator of the National Oceanic and Atmospheric Administration, and one individual from the affected State, as determined by the Secretary of the Interior and appointed by you, Mr. President.

The Massachusetts commercial lobster industry is continually in the crosshairs of the ongoing right whale litigation, and we need to put this to an end today with smart reasonable changes to the ESA and MMPA that with help both the right whales thrive, and commercial lobstermen survive.

European Union and Canadian Lobster Trade

Thank you, Mr. President, for your leadership and fortitude in helping the commercial lobster industry here in the Commonwealth with the recent European Union's pledge to end tariffs on the American lobster. This is extremely helpful as the European market purchases sizeable amounts of lobsters that are landed here in the Commonwealth for their Christmas celebrations at a time of year when our commercial lobstermen are landing the lion's share of their catch. Without this additional tariff our commercial lobstermen will hopefully see an increase in their ex-vessel price from the lobster dealers.



(Lobster landings data provided by MADMF)

Recently, the U.S. International Trade Commission announced that there will be an investigation into the negative effects of the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) on the U.S. lobster industry and the volume of U.S. exports of lobster. The data that will be compiled and analyzed in this report will be advantageous for commercial lobster businesses that are planning out there next year.

Joint Statement of the United States and the European Union on a Tariff Agreement

08/21/2020

United States Trade Representative Robert Lighthizer and European Union Trade Commissioner Phil Hogan today announced agreement on a package of tariff reductions that will increase market access for hundreds of millions of dollars in U.S. and EU exports. These tariff reductions are the first U.S.-EU negotiated reductions in duties in more than two decades. <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2020/august/joint-statement-united-states-and-european-union-tariff-agreement>

This report will be critical to help deliver an in-depth outline of the current U.S. and Canadian commercial lobster industries, encompassing data on processing and catch levels, employment, supply chains, prices, domestic consumption, and key factors that affect the commercial lobster industries industry effectiveness.

Another much needed component of this report will be the in-depth analysis and depiction of trends in lobster exports between the U.S. and Canada to the European Union and United Kingdom, as well as other key end markets, including but not limited to China, over the last five years. We are hopeful that this report will show the need for tariffs on all the lobsters that are coming into the United States free and clear that have a direct negative economic impact on our commercial lobstermen.

25% China Tariffs on Lobster and Steel

On July 6th, China imposed 25% retaliatory tariffs on a wide range of U.S. seafood exports worth nearly \$1 billion in 2017. Here in the Commonwealth the live, frozen and processed lobster products will make our lobsters less competitive in China as Canada will not be subject to the same 25% tariff.

China is taking out their trade frustration out on our lobstermen, lobster dealers, and lobster consumers due to an ongoing trade war with the United States. The US lobster export market to China is second to Canada and without the fiduciary relief it will cost the dealers upwards of an additional \$250 million dollars all of which will have a direct impact on the fishing industry around the United States.

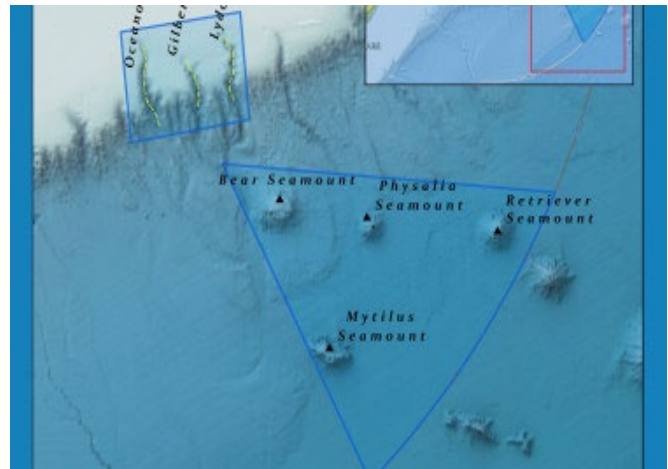
There is also a 25% retaliatory tariff imposed on steel, and this will impact all the lobster pot dealers and manufactures of wire the commercial lobster industry depends on. To keep the steel markets flowing and steel, this tariff on all steel coming and going to China will directly impact ALL pot fisheries.

Furthermore, several of our members are wire and lobster pot manufacturers and this additional 25% tariff is hurting their ability to deliver a cost-effective product to the commercial lobstermen. Now the commercial lobstermen here in Massachusetts are being negatively impacted twice; 25% on their lobsters going to China and another 25% on the steel that is needed to make their lobster pots. There are not too many businesses that can sustain these exorbitant increases for a long time.

Proclamation on Modifying The Northeast Canyons And Seamounts Marine National Monument

Thank you, Mr. President, for signing the Proclamation on June 5, 2020 on Modifying The Northeast Canyons And Seamounts Marine National Monument created *“In Proclamation 9496 of September 15, 2016, and exercising his authority under section 320301 of title 54, United States Code (the “Antiquities Act”), the President established the Northeast Canyons and Seamounts Marine National Monument, reserving for the care and management of objects of historic and scientific interest approximately 4,913 square miles of water and submerged lands in and around certain deep-sea canyons and seamounts situated upon lands and interests in lands owned or controlled by the Federal Government.”*

<https://www.whitehouse.gov/presidential-actions/proclamation-modifying-northeast-canyons-seamounts-marine-national-monument/>



The estimated loss of income to the shoreside businesses is in hundreds of millions of dollars. These negative economic impacts will have a ripple effect on the shoreside businesses the commercial fishing industry depends on such as marinas, seafood dealers and processors, and fuel companies. As the commercial fishing industry is further restricted and unable to keep up demand for their services these companies leave the area, and the fishermen left are no longer able to receive these services.

When the MLA is asked what help is needed today for the commercial lobster industry, there are several things that come to the surface.

1. The Marine Mammal Protection Act and the Endangered Species Act, need to be reauthorized as they have become out-of-date and unattainable from the get-go for the commercial fixed gear fishermen. The MMPA and ESA are going to make the hard-working commercial lobstermen extinct.
2. The commercial lobster industry needs to have a level playing field when it comes to importing and exporting lobsters. Not all trade is created equal, and we need your help to get the job done so our commercial lobstermen are compensated accordingly.
3. The trade war needs to be resolved as swiftly as possible so our hard-working commercial lobstermen and seafood dealers can compete with the Canadians who do not have the additional 25% tariff on their lobsters that are going to China. Also, the wire and lobster pot manufactures will benefit by having the additional 25% tariff on steel lifted. In the end the commercial lobstermen will somehow and in some way be paying for all these tariffs.
4. The MLA is seeking a permanent solution to allow the commercial lobstermen unobstructed access to these fishing grounds no matter what administration is in place. The MLA is extremely concerned about the future negative economic impacts should this Marine National Monument designation be implemented permanently here in Southern New England.

Commercial fishing is historic and an iconic part of what helped build this great country and the commercial lobstermen here in the Commonwealth are stewards of the sea as they continue to fish under the most restrictive conservation measures anywhere in the world. Our commercial lobstermen deserve to know that their state and federal agencies and elected officials are going to fight for them to save their industry not only for today, but for future generations to come.

In closing, the Massachusetts Lobstermen's Association members thank you, Mr. President, for your prompt attention to these most sensitive matters. We look forward to hearing from you soon.

Sincerely,

Beth Casoni

Executive Director

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cc.

Sen. E. Warren

Sen. E. Markey

Gov. C. Baker, MA

Lt. Gov. K. Polito, MA

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R. Amidon, Com. FWE

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MA Marine Fisheries Com.

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J. Cutler, Rep. MA, Coastal Caucus Chair

MLA Ex. Committee