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ADMITTED TO PRACTICE
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August 23, 2018

Dr. John F. Quinn, Chairman
New England Fishery Management Council
50 Water Street
Newburyport, MA 01950

Dr. David E. Pierce, Director
Massachusetts Division of Marine Fisheries
250 Causeway Street, Suite 400
Boston, MA 02114

Dear Sirs:

Re: August 28, 2018 Habitat Committee Meeting/Clam Dredge Framework

I write representing multiple Atlantic surfclam fishermen, to address the clam dredge framework item on the agenda for the August 28, 2018 Habitat Committee meeting. Previously, I wrote to the Council on this matter in a June 8, 2018 letter (attached). It is my understanding that the Habitat Committee is considering implementing restrictions at its meeting that will adversely impact the Massachusetts surfclam industry. It appears that these restrictions are supported by newly considered, misconstrued, and inconclusive scientific results. I suggest that the Habitat Committee review the previous work of the Plan Development Team ("PDT") and approve a plan whereby fishermen may continue to work and earn their livelihoods in the areas now open to them, while collaborating with scientists and regulators on a meaningful, long-term study of the impact of the surfclam industry on the ocean bottom habitat. Such a study is necessary to determine in a scientific manner whether restrictions should be placed on a forty million dollar offshore industry that is the source of many needed jobs, both offshore, and on land in ancillary businesses. Such a cooperative study would be an important model for developing fishery management plans in the future.

As the Committee is well aware, the Nantucket Shoals has a unique bottom topography that changes daily, with significant shifts over the course of a fishing season and year. These changes necessitate long-term study. The fishermen have extensive knowledge of the area and operate smaller vessels designed to traverse these waters. The government can take advantage of the clambers' navigation and fishing equipment and knowledge by conducting continuing scientific studies of the habitat and environmental impact of clamming and can place satellite monitoring

systems onboard the clammers' vessels, as well. This will enable a comprehensive real-time survey of the impact, if any, that clamming is having on the Nantucket Shoals habitat. Such a study will yield results based on the best science and methods available, delivering the type of data that the Habitat Committee needs to assess whether restrictions are necessary and how they may be tailored to avoid unwarranted interference with the surfclam industry. Incidentally, this public/private study will save the government millions of dollars in taxpayer funds versus the Government attempting to duplicate this effort on its own.

While the study is undertaken, the clammers will continue their operations in the same manner in which they normally fish. They will harvest while moving at extremely slow speeds (1-2 MPH), for a short period of time (15-30 minutes per tow), in confined areas, while limiting themselves to one tow per area. This will allow for the sediment to settle back into a similar position on the ocean floor following dredging. In point of fact, the Nantucket Shoals ocean currents continually move more sediment on the ocean floor as the surfclam dredge operations.

The Committee must be completely transparent and concede that the proposed study is necessary, as no scientific support has been shown for implementing restrictions on the surfclam industry. While the "Stokesbury study" has been cited in support of restrictions, it is based on extremely limited data taken in an area of the ocean floor that changes daily and often with dramatic results. Dr. Stokesbury did not present his data as a representation of the environmental impacts of the surfclam industry on the ocean floor habitat and it would be a misuse of his data to construe it as such. If Dr. Stokesbury's study is to be used to justify regulation for regulation's sake, then I suggest that Dr. Stokesbury testify before the full committee as to his findings and conclusions, if any, as to whether his study can be used as "the best available science" to justify a restriction in the surfclam industry. I predict he will concede that his "study" was not conducted for this purpose.

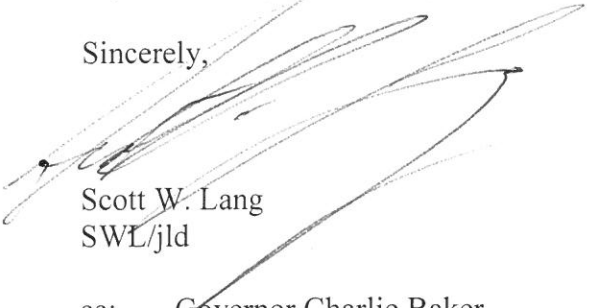
In addition, no scientific studies of the area tides have been presented. Given the ever-changing nature of the area in question, this information is necessary for a proper understanding of the area and how surfclamming and other factors impact on the habitat of the Nantucket Shoals.

Finally, it must be noted that, in the Spring of this year, the Habitat Committee did not find sufficient scientific evidence to restrict the surfclam industry. At the time, it presented an option for clamming through April 2019, with parallel study, to allow for a proper understanding of the issue. Nothing has happened since the Spring to justify a change in plan. What happened behind the scenes to provide for a complete reversal of the staff's conclusions? Any action undertaken now would necessarily be based on the same inconclusive results that were deemed insufficient just three months ago. Such action would not be based on "the best available science," as is necessary to support restricting the surfclam industry that is vital to the Massachusetts economy.

I ask that you consider adopting a measured, positive approach to developing a fishery management plan for the surfclam industry in the Great South Channel/Nantucket Shoals fishing grounds. Such an approach involves a partnership with the surfclam industry as outlined in the June 8, 2018 letter.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Scott W. Lang
SWL/jld

cc: Governor Charlie Baker
Senator Elizabeth Warren
Senator Edward Markey
Representative William Keating
Speaker Robert DeLeo
Senate President Karen Spilka

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June 8, 2018

Governor Charlie Baker
Commonwealth of Massachusetts
Office of the Governor
Massachusetts State House, #280
Boston, Massachusetts 02133

Dear Governor Baker:

Once again, I hope this letter finds you well. I am again writing to you on behalf of multiple Atlantic surfclam fishermen in a matter involving the fishing grounds in the Great South Channel, which is within Nantucket Shoals and in federal waters. I have new input from stakeholders who have added information that I believe should be in this correspondence.

As I discussed in my June 1, 2018 letter regarding the Atlantic surfclam fishery and the Great South Channel, the Atlantic surf clam industry is a mainstay industry for our state's fishing industry. Again, some facts and information about the surf clam industry that demonstrate its importance to the Commonwealth are as follows:

- The Atlantic surfclam fishery is estimated to be worth \$40 million, not including on-shore, ancillary businesses.
- In 2016, Atlantic surfclams was the 3rd most valuable fishery for the City of New Bedford (the Number 1 fishing Port in Revenue in the United States since 1999) at \$13 million (the Sea Scallop fishery was first and the Groundfish fishery was second).
- Several fishermen who harvest Atlantic surfclams from the Great South Channel fish out of Massachusetts ports, including New Bedford, Fairhaven, and Hyannis.

- These fishermen sell their harvest to on-shore businesses in Massachusetts.
- Atlantic surfclams are harvested by non-destructive hydraulic dredging.
- Harvesting of Atlantic surfclams in the Great South Channel Area has little environmental impact because it is done at a slow speed (1-2MPH), for a short period of time (15-30 minute tows), in confined areas, and vessels do not complete multiple tows over the same area. As a result, sediment settles back onto the ocean floor in a similar place following the dredging.

- Ocean current can move the equivalent or more sediment on the ocean floor as the Atlantic surfclam dredges.

Again, on May 22, 2018, the Habitat Committee held a public meeting in Providence, Rhode Island and took up the matter of whether or not to close a portion of the Great South Channel Area to hydraulic dredging of the Atlantic surf clams, because the area is essential fish habitat. Again, the Plan Development Team's ("PDT") report contained the following notable information:

- The estimated Atlantic surfclam annual revenue from the portion of the Great South Channel Area under review is worth upwards of \$8 million, not including on-shore, ancillary businesses;
- The fishing communities that would be most affected by the proposed restriction would be primarily those located in Massachusetts (New Bedford, Barnstable County, and Fairhaven);
- The Massachusetts fishing communities comprise approximately 99.9% of the revenue derived from the portion of the Great South Channel Area under review;
- The scientific studies were inconclusive as to whether surf clamming has any impact on essential fish habitat in the Great South Channel Area; and
- There is no scientific evidence of detrimental impact on the habitat and there is socio-economic evidence to show substantial detrimental impact on the economy of ports which are home to the surf clam fishermen.
- There are multiple Atlantic surfclam vessels that have two monitoring systems onboard. The first is a satellite monitoring system that all Atlantic surfclam vessels are required to have and that record the location of the vessel every hour. The second, called the Faria Beede, has been voluntarily installed by some vessels. The second system makes a record every minute of the vessel's location, speed in knots and whether the hydraulics are engaged. The second system automatically sends the data to NOAA by cell phone when the vessel comes into port.

After public comments, the Habitat Committee voted to make the following recommendations to the NEFMC at the June 14, 2018 Council meeting:

1. Take no action at this time to impose any new restrictions on the areas that the surfclam fishermen can harvest clams from;

2. Permit the surfclam fishermen to harvest Atlantic surfclams from the Great South Channel Area through the April 2019 exemption deadline;
3. Encourage the NEFMC to recommend to NOAA's Science Center that it conduct collaborative benthic habitat studies of the Nantucket Shoals Area with the Atlantic surfclam fishermen in order to determine whether surf clamming has any habitat impact and if any, the extent of such impact and what the remedy should be; and
4. That the NEFMC should determine whether increased monitoring frequency of vessel location (the current frequency is every hour) and what the frequency would be, with the goal of determining what areas the fishermen are most frequently harvesting from to better understand which areas should be considered for exemption in the future.
5. The Habitat Committee also voted that the NEFMC should be presented with multiple options regarding how to move forward with exemptions, including the option of continuing the current exemption for two and a half years in order to allow further scientific studies to be conducted.

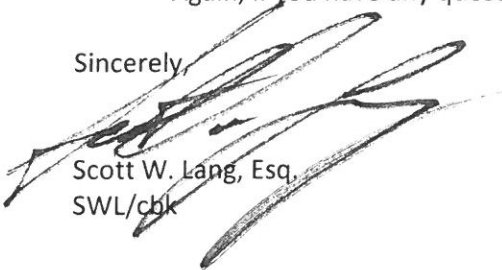
I again commend the Habitat Committee for basing its decision upon the best available science and the economic impacts to the fishing industry and finding that due to the lack of scientific evidence regarding the impact these fishermen have on the habitat, that the economic impact to a \$40+ million industry outweighed any unproven theory of possible habitat impact.

In summary, the Habitat Committee's vote and recommendations will now go before the full New England Fishery Management Council on June 14, 2018. The full NEFMC will vote on the matter of whether or not to close the portion of the Great South Channel to Atlantic surfclam fishermen. My clients are supportive of the recommendation that the NEFMC (1) continue the exemptions with a sunset date of April 2021 and (2) that all vessels be equipped with the two monitoring systems, as discussed above (Motion #5 in the Council staff's prepared and publically available June 14th presentation). Additionally, my clients are supportive of conducting collaborative studies with NOAA's Science Center.

The best available science supports the Habitat Committee's recommendations to the New England Fishery Management Council, as outlined above. I am again optimistic that the Commonwealth's representatives on the NEFMC will adopt the PDTs and Habitat Committee's recommendations regarding the Great South Channel.

Again, if you have any questions, please do not hesitate to contact me.

Sincerely,



Scott W. Lang, Esq.
SWL/cbk

CC: New England Fishery Management Council, *via email to comments@nefmc.org*
Dr. John F. Quinn, Chairman
Dr. David E. Pierce, Director for Massachusetts Division of Marine Fisheries