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# CORRESPONDENCE

June 16, 2026

**VIA ELECTRONIC MAIL**

New England Fishery Management Council  
ATTN: Dr. Cate O’Keefe, Executive Director  
50 Water Street, Mill 2  
Newburyport, MA 01950

Dear Dr. O’Keefe:

We write on behalf of the fishermen in *Loper Bright*<sup>1</sup> and *Relentless*.<sup>2</sup> These groundbreaking cases, which successfully overturned the forty-year-old *Chevron*-deference doctrine,<sup>3</sup> are still pending on remand and involve challenges to the legality of the New England Industry-Funded Monitoring (“IFM”) Omnibus Amendment (“Omnibus Amendment”)<sup>4</sup> and its implementing regulations,<sup>5</sup> including specific measures establishing an at-sea monitoring program in the Atlantic herring fishery.<sup>6</sup>

Last month, the head of NOAA Fisheries requested that the Council consider an action “removing [the] Atlantic herring monitoring requirements” in order to “reduce regulatory burdens.”<sup>7</sup> Failure to undertake that step could prompt secretarial action “to prepare an amendment to rescind these measures” directly.<sup>8</sup> NOAA Fisheries has correctly recognized the need to provide regulatory relief to hardworking fishermen, many of whom operate small, family-owned businesses.<sup>9</sup>

We respectfully urge the Council to heed Mr. Soler’s recommendation and ensure that IFM, as introduced by the Omnibus Amendment, is eliminated from all relevant fishery management plans (“FMPs”).<sup>10</sup> **This is best achieved through rescission of both the IFM measures added to the Atlantic herring FMP in December 2018 and the implementing regulations finalized in February 2020.** The Council should also consider rescinding the remaining measures of the Omnibus Amendment. These are the administrative actions challenged in our clients’ cases. Such comprehensive action is consistent with Executive Order 14276 and Executive Order 14219.

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<sup>1</sup> *Loper Bright Enters. v. Lutnick*, No. 21-5166 (D.C. Cir.).

<sup>2</sup> *Relentless, Inc. v. Dep’t of Commerce*, No. 25-1845 (1st Cir.).

<sup>3</sup> *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

<sup>4</sup> NEW ENG. FISHERY MGMT. COUNCIL, INDUSTRY-FUNDED MONITORING OMNIBUS AMEND. (Dec. 2018) [hereinafter “OMNIBUS”], available at <https://d23h0vhsm26o6d.cloudfront.net/EA-for-IFM-Amendment-December-2018.pdf>.

<sup>5</sup> 85 Fed. Reg. 7,414 (Feb. 7, 2020) (to be codified at 50 C.F.R. pt. 648).

<sup>6</sup> 50 C.F.R. § 648.11(m).

<sup>7</sup> Letter from Eugenio Piñeiro Soler, Ass’t Adm’r for Fisheries, Nat’l Marine Fisheries Serv. to Cate O’Keefe, Exec. Dir., New Eng. Fishery Mgmt. Council (May 1, 2026) [hereinafter, “Soler Letter”], available at <https://d23h0vhsm26o6d.cloudfront.net/3.-20260501-E.-Pineiro-Soler-to-NEFMC-re-Herring-IFM.pdf>.

<sup>8</sup> *Id.*

<sup>9</sup> See generally *Administration Commercial Fishing Industry Wins*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/national/sustainable-fisheries/administration-commercial-fishing-industry-wins> (last visited June 16, 2026).

<sup>10</sup> The proposed rescissions would have no bearing on existing IFM programs in the Atlantic scallop or groundfish fisheries. See 85 Fed. Reg. at 7,415–16. These programs are either expressly authorized, as they exist in limited access privilege programs (“LAPPs”), or involve actions that pre-date the Omnibus Amendment (e.g., Amendment 16 to the groundfish FMP). These are not subject to our clients’ cases or anyone else’s to our knowledge.

## I. IFM is costly, ineffective, and inconsistent with Executive Order 14276.

Executive Order 14276 makes clear that “[i]t is the policy of the United States to . . . unburden . . . commercial fishermen from costly and inefficient regulation.”<sup>11</sup> To that end, the Council was previously directed to identify rules that could be eliminated “to reduce burdens on domestic fishing and to increase production.”<sup>12</sup> Numerous stakeholders, including our clients,<sup>13</sup> suggested the Council eliminate IFM in the herring fishery as part of its implementation of the executive order.<sup>14</sup> The Omnibus Amendment and its anticipated IFM schemes remain prime candidates for rescission, given their anticipated cost and demonstrated ineffectiveness.

*First*, the costs of IFM, if implemented as envisioned by the Council, remain as destructive as ever. The Magnuson-Stevens Act (“MSA”) expressly requires all FMPs and relevant regulations to “minimize costs,”<sup>15</sup> “provide for the sustained participation of [fishing] communities,”<sup>16</sup> and “minimize adverse economic impacts.”<sup>17</sup> The Omnibus Amendment never met those standards. For example, with the herring fishery, the Council estimated that monitoring costs would **exceed \$710 per sea day**, leading to a **20% reduction in returns-to-owner** across the entire fleet.<sup>18</sup> If midwater trawl vessels were to purchase a NEFOP-level observer to gain access to a groundfish closed area, they would be expected to pay even more, at \$818 per sea day.<sup>19</sup> These costs, in some instances, could run higher than the daily-landings revenue of a typical small-scale vessel.

The Council’s cost estimates were published nearly a decade ago, based on data collected from even older surveys. The current economic situation—with higher fixed costs for food, fuel, and labor, plus the impacts of revised and reduced quota and lower levels of biomass and fishery productivity—suggests the **impact of IFM today would be even more adverse** to fishermen than originally predicted. Consider expected quota for the upcoming 2027 fishing year. The recently released 2026 Atlantic herring management track assessment report tells us that total acceptable biological catch for 2027 will only be 6,222 metric tons, of which 5,130 will be set-aside for Canadian fixed-gear catches.<sup>20</sup> That means American fishermen will only be given approximately 1,000 metric tons of herring. IFM with such limited quota—which represents a 53% cut from current catch limits—is uneconomical.

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<sup>11</sup> Exec. Order 14276, 90 Fed. Reg. 16,993, 16,993 (Apr. 22, 2025).

<sup>12</sup> *Id.* at § 4(a)(i).

<sup>13</sup> *See, e.g.*, Letter from Meghan Lapp, Fisheries Liaison, Seafreeze Ltd. to Cate O’Keefe, Exec. Dir., New Eng. Fishery Mgmt. Council (July 21, 2025) (attached as Exhibit 1); *see also* Letter from Wayne Reichle, President, Lund’s Fisheries, to Cate O’Keefe, Exec. Dir., New Eng. Fishery Mgmt. Council (Aug. 15, 2025) (attached as Exhibit 2).

<sup>14</sup> *See generally* New Eng. Fishery Mgmt. Council, Memo. re: Executive Order 14276 – Additional Comments (Mar. 30, 2026), *available at* <https://d23h0vhs26o6d.cloudfront.net/8a-260330-Ex-Com-to-Council-Additional-Comments-for-EO-14276.pdf>; New Eng. Fishery Mgmt. Council, Memo. re: Executive Order 14276 – Additional Comments (Mar. 18, 2026), *available at* <https://d23h0vhs26o6d.cloudfront.net/4-260318-ED-to-Ex-Com-EO-14276-Additional-Public-Comments.pdf>; Letter from Cate O’Keefe, Exec. Dir., New Eng. Fishery Mgmt. Council, to Eugenio Piñero Soler, Ass’t Adm’r for Fisheries, Nat’l Marine Fisheries Serv. (Sept. 30, 2025), *available at* <https://static1.squarespace.com/static/56c65ea3f2b77e3a78d3441e/t/68e566d505e4756557456155/1759864533932/NEFMC+EO+14276+Response.pdf>.

<sup>15</sup> 16 U.S.C. § 1851(a)(7).

<sup>16</sup> *Id.* § 1851(a)(8).

<sup>17</sup> *Id.*

<sup>18</sup> 85 Fed. Reg. at 7,418.

<sup>19</sup> *Id.* at 7,419. This was expected, in turn, to lead to a 5% reduction in returns-to-owner. *Id.*

<sup>20</sup> NOAA FISHERIES, ATL. HERRING 2026 MGMT. TRACK ASSESSMENT REP. (June 5, 2026) (on file with CoA Inst.).

*Second*, IFM in the herring fishery has proven to be ineffective at achieving the Council’s stated monitoring goals. Following publication of the Omnibus Amendment’s final rule, the government repeatedly delayed implementation,<sup>21</sup> even reimbursing industry costs for the limited monitoring that did take place in 2021 and 2022.<sup>22</sup> Congress, by declining to provide the funds necessary to maintain the program at that time, tacitly announced its opposition. Then, the government suspended IFM for the foreseeable future beginning in 2023.<sup>23</sup> For the past six years, the herring IFM program has produced *no* meaningful scientific data, which might be used for better regulation of the Council’s fisheries, or to improve the enforcement of existing management measures.<sup>24</sup> There is no practical reason to retain such an ineffective regulatory scheme.

## II. IFM cannot survive *Loper Bright* review, as required by Executive Order 14219.

There are equally strong grounds for rescission under Executive Order 14219. This order requires agencies to identify regulations that, among other things, “are based on anything other than the best reading of the underlying statutory authority,” and initiate steps to rescind or modify them.<sup>25</sup> More specifically, President Trump has clarified that Executive Order 14219 involves “evaluating each existing regulation’s lawfulness under . . . *Loper Bright Enterprises v. Raimondo*,”<sup>26</sup> which means determining whether the regulation can be defended without relying on *Chevron* deference. Here, the Omnibus Amendment does *not* reflect—and has never reflected—the best reading of the MSA.

As a preliminary matter, the government’s defense of IFM in *Loper Bright* and *Relentless* has always depended on the advantages provided by *Chevron* deference. In *Loper Bright*, the D.C. Circuit was clear the MSA does not “unambiguously resolve whether the [National Marine Fisheries] Service can require industry-funded monitoring” in the herring fishery.<sup>27</sup> While the MSA’s “text makes clear the Service may direct vessels *to carry* at-sea monitors,” it “leaves unanswered whether the Service . . . may require *industry to bear the costs*[.]”<sup>28</sup> Thus, contrary to the Council’s long-held view, the circuit court in *Loper Bright* held the MSA was “not . . . wholly unambiguous” regarding the purported authority to impose IFM.<sup>29</sup> The existence of that supposed ambiguity—really, an instance of statutory silence—

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<sup>21</sup> See, e.g., Pls.’ Not. of Factual Dev., *Loper Bright Enters. v. Raimondo*, No. 20-0466 (D.D.C. May 17, 2021), ECF No. 35.

<sup>22</sup> *Status of Industry Cost Reimbursement for Atlantic Herring Industry-Funded Monitoring*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/bulletin/status-industry-cost-reimbursement-atlantic-herring-industry-funded-monitoring> (last visited June 16, 2026).

<sup>23</sup> *Atlantic Herring Industry-Funded Monitoring Program Suspended Beginning in April 2023*, NOAA FISHERIES, <https://www.fisheries.noaa.gov/bulletin/atlantic-herring-industry-funded-monitoring-program-suspended-beginning-april-2023> (last visited June 16, 2026).

<sup>24</sup> Indeed, as the Soler Letter explains, the Council never conducted its planned post-implementation evaluation of IFM, which was expected to begin roughly four years ago. See OMNIBUS at 328 (“Two years after implementation . . . the Council will examine the results of additional monitoring . . . and consider if adjustments to herring coverage targets are warranted. This re-examination may help mitigate any potential controversy related to [IFM] in the herring fishery.”).

<sup>25</sup> Exec. Order 14219, 90 Fed. Reg. 10,583, 10,583 (Feb. 25, 2025). Relevant here, the order also directs agencies to rescind rules that “impose significant costs upon private parties that are not outweighed by public benefits,” *id.* at § 2(a)(v), or “impose undue burdens on small business and impede private enterprise and entrepreneurship.” *Id.* at § 2(a)(vii).

<sup>26</sup> Presidential Memo. to Heads of Exec. Dep’ts & Agencies regarding “Directing the Repeal of Unlawful Regulations” (Apr. 9, 2025), *available at* <https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations>.

<sup>27</sup> *Loper Bright Enters. v. Raimondo*, 45 F.4th 359, 365 (D.C. Cir. 2022).

<sup>28</sup> *Id.* (emphasis added); see *id.* at 366 (describing the Act as “not . . . wholly unambiguous”).

<sup>29</sup> *Id.* at 366; *id.* 365 (“[T]he Act [does] not unambiguously resolve whether the service can require industry-funded monitoring[.]”); *id.* at 368 (“Congress has thus provided no wholly unambiguous answer[.]”).

prompted the court to find an implied delegation granting the agency—and, by extension, the Council—the requisite authority to “fill this gap with a reasonable interpretation” of the scope of its own power.<sup>30</sup> The First Circuit was hardly different in *Relentless*, where it even neglected to clarify whether its decision was based on *Chevron* Step One or Step Two.<sup>31</sup>

Without *Chevron*, that distorted outcome is no longer tenable. Judges may not defer to the government’s reading of the law but must resolve statutory ambiguities on their own, according to their best judgment and after employing all the traditional tools of statutory interpretation. The D.C. Circuit previously—and correctly—observed that “[n]either Section 1853(b)(8), nor any other provision of the [MSA], explicitly allows the Service to pass on to industry the costs of monitoring requirements included in [FMPs].”<sup>32</sup> Because the MSA “does not authorize the agency’s action, the analysis [should] end[] and the agency lose[.]”<sup>33</sup> Any other conclusion requires presuming that Congress’s failure to prohibit IFM in the herring fishery amounts to its indirect authorization. And that kind of presumption is “backwards as a matter of basic separation of powers and administrative law.”<sup>34</sup> Regulators “may only take action that Congress has *authorized*.”<sup>35</sup> Such authorization is absent here.<sup>36</sup>

Close examination of the underlying statutory authority confirms that IFM does not reflect the best reading of the law. Consider, Section 1853(b)(8). This provision was the sole cited source of authority in the final rule implementing the Omnibus Amendment.<sup>37</sup> But Section 1853(b)(8) says nothing about IFM. It merely authorizes FMPs to include management measures “requir[ing] . . . observers be carried on board a vessel[.]”<sup>38</sup> That means exactly what it says: vessels may have to *carry* monitors—and cover incidental expenses associated with that carrying—but they cannot be forced to pay those monitors’ salaries. As Judge Walker noted in *Loper Bright*: “[T]here is no inherent, or even intuitive, connection between paying a monitor’s wage and providing him passage.”<sup>39</sup> The ordinary meaning of “carry” speaks only to physical conveyance or carriage—not the imposition of a significant, ongoing financial liability that can consume of up to 20% of a vessel’s returns.<sup>40</sup>

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<sup>30</sup> *Id.* at 368 (The Act “through its silence, leaves room for agency discretion.”).

<sup>31</sup> See *Relentless, Inc. v. Dep’t of Commerce*, 62 F. 4th 621, 634 (1st Cir. 2023); see also *Loper Bright Enters.*, 603 U.S. at 406 (“[T]hough” the First Circuit “ultimately appears to have deferred under step two[.]”).

<sup>32</sup> *Loper Bright*, 45 F.4th at 368 (emphasis added).

<sup>33</sup> *Id.* at 374 (Walker, J., dissenting).

<sup>34</sup> *Bais Yaakov of Spring Valley v. Fed. Comm’n’s Comm’n*, 852 F.3d 1078, 1082 (D.C. Cir. 2017).

<sup>35</sup> *Id.*; accord *Gulf Fishermens Ass’n v. Nat’l Marine Fisheries Serv.*, 968 F.3d 454, 456 (5th Cir. 2020) (“Congress does not delegate authority merely by not withholding it.”).

<sup>36</sup> Although the district court on remand in *Relentless* concluded that IFM is defensible without *Chevron*, there are deficiencies in the court’s reasoning. Rather than engage in *de novo* review and provide any textual analysis, the court simply reiterated its view that agencies can fund their desired programs by foisting compliance costs onto business entities by regulatory fiat. See *Relentless, Inc. v. Dep’t of Commerce*, No. 20-0108, 2025 WL 1939025, at \*4 (D.R.I. July 15, 2025); cf. *Relentless, Inc.*, 62 F.4th at 629–30. The court also failed to set the bounds of the MSA’s delegation for FMP measures deemed “necessary and appropriate” for the conservation of a fishery, instead relying on its prior *Chevron* Step Two analysis and the First Circuit’s now-vacated panel opinion. See *Relentless, Inc.*, 2025 WL 1939025 at \*5; cf. *Relentless, Inc.*, 62 F.4th at 634–39; *Relentless, Inc. v. Dep’t of Commerce*, 561 F. Supp. 3d 226, 237–38 (D.R.I. 2021).

<sup>37</sup> 85 Fed. Reg. at 7,422.

<sup>38</sup> 16 U.S.C. § 1853(b)(8).

<sup>39</sup> *Loper Bright*, 45 F.4th at 375–76 (Walker, J., dissenting).

<sup>40</sup> Black’s Law Dictionary (6th ed. 1990) (to “carry,” in relevant part, means “[t]o bear, bear about, sustain, transport, remove, or convey”); Merriam-Webster (1990 ed.) (defining “carry” as “to move while supporting: transport, convey”).

Additionally, trying to treat IFM as a mere “compliance cost” impliedly authorized by Section 1853(b)(8) is a category error of the highest order. To start, the very notion of an implied delegation in the wake of *Loper Bright* is highly suspect.<sup>41</sup> And as NOAA regulations make clear, **compliance costs are limited to incidental responsibilities** like feeding a monitor and providing him a bunk, making navigation equipment available for his use, or affording him access to a vessel’s bridge, holds, and communications logs.<sup>42</sup> The government in *Loper Bright* and *Relentless* still has not provided a *single example* from *any* regulatory context where an agency, “without express direction from Congress, requires an industry to fund its own inspection regime.”<sup>43</sup> Congress knows how to empower an agency to pass these non-incidental costs on to regulated entities. It has done so in the fisheries context with permit fees.<sup>44</sup> Congress has also explicitly authorized industry funding in limited circumstances inapplicable to the herring fishery.<sup>45</sup> The best reading of the MSA, then, is that any delegation of authority to impose debilitating costs on an already beleaguered fleet would have been expressly provided by Congress—and **such power was instead withheld.**<sup>46</sup>

Section 1853(b)(14)’s residual “necessary and appropriate” clause cannot substitute as an alternative justification for IFM in the herring fishery. A “catchall clause” is not a blank check providing unbounded regulatory discretion.<sup>47</sup> Such a provision must instead be understood in context, construed in light of surrounding statutory language,<sup>48</sup> and not read so broadly as to permit anything not expressly forbidden.<sup>49</sup> Congress would otherwise have written the statute differently.<sup>50</sup> In this respect, Section 1853(b)(14)’s reference to “necessary” and “appropriate” does not empower the Council or agency to impose IFM as a general matter. So far as other provisions in Section 1853 speak

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<sup>41</sup> See, e.g., Ryan P. Mulvey, “Can there still be ‘implicit delegation’ after *Loper Bright*?” AMS. FOR PROSPERITY FOUND. (May 14, 2026), <https://americansforprosperityfoundation.org/loper-bright/can-there-still-be-implicit-delegation-after-loper-bright>.

<sup>42</sup> See 50 C.F.R. § 648.11(d)(1)–(3), (6)–(7); accord *Loper Bright*, 45 F.4th at 376 (Walker, J., dissenting) (“A cost incidental to carrying an observer might include the additional fuel costs of a marginally heavier boat or the opportunity cost of giving to the monitor a bunk that would otherwise be occupied by a working fisherman.”).

<sup>43</sup> *Loper Bright*, 45 F.4th at 376 (Walker, J., dissenting); see *id.* at 366 (“Nothing in the record [of the Omnibus Amendment] definitively establishes whether at-sea monitors are the type of regulatory cost that might fall on fishing vessels by default or whether Congress would have legislated with that assumption.”).

<sup>44</sup> See 16 U.S.C. § 1853(b)(1) (FMPs may “require a permit to be obtained from, and fees to be paid to, the Secretary[.]”).

<sup>45</sup> See *id.* §§ 1821(h)(4), (6) (foreign vessels); 1827(d) (same); 1853a(c)(1)(H), (e)(2) (LAPPs); 1862(a) (North Pacific Council fisheries research plans). These three sections provide a compelling negative implication against an alleged general authority to impose industry funding, either in the herring fishery or more broadly. See, e.g., *NASDAQ Stock Mkt. LLC v. Sec. & Exch. Comm’n*, 38 F.4th 1126, 1137 (D.C. Cir. 2022) (When “a grant of authority . . . reasonably impl[ies] the preclusion of alternatives,” the [*expressio unius*] canon is a useful aide.”); see generally *Anglers Conservation Network v. Pritzker*, 139 F. Supp. 3d 102, 116 n.9 (D.D.C. 2015) (“[C]ost sharing” programs with industry participants . . . were expressly authorized by statute for particular fisheries only.” (citing 16 U.S.C. § 1862)).

<sup>46</sup> Cf. *Maine Lobstermen’s Ass’n v. Nat’l Marine Fisheries Serv.*, 70 F.4th 582, 600 (D.C. Cir. 2023) (“We may reasonably expect the Congress at least to speak, not to be silent, when it delegates this power to destroy.”).

<sup>47</sup> *Mexican Gulf Fishing Co. v. Dep’t of Commerce*, 60 F.4th 956, 965 (5th Cir. 2023) (“[T]he adjectives *necessary* and *appropriate* limit the authorized contained in” Section 1853(b)(14).); see *Gulf Fishermens Ass’n*, 968 F.3d at 465 (“The grant of authority to promulgate necessary regulations cannot expand the scope of the provisions the agency is tasked with carrying out.”).

<sup>48</sup> See *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 217 (2024).

<sup>49</sup> *Id.* at 218 (If “Congress set[s] out a detailed list of powers, followed by a catchall that is qualified with the term ‘appropriate,’” that phrase must “draw[] its meaning from surrounding provisions.”). Abstract goals like “conservation” also cannot override statutory text. See, e.g., *Ethyl Corp. v. Emtl. Prot. Agency*, 51 F.3d 1053, 1060 n.9 (D.C. Cir. 1995).

<sup>50</sup> When resolving a dispute about a statute’s meaning,” courts may “look for guidance not just in its immediate terms but in related provisions as well.” *Harrington*, 603 U.S. at 221. Here, Congress’s decision to authorize industry funding in three specific contexts—and not in the herring fishery—cuts against any implied general authorization. See *supra* note 45.

to regulatory obligations that can be imposed on fishermen, they are limited to things like quotas, catch-limits, or other capacity restrictions<sup>51</sup>; mandatory data submissions<sup>52</sup>; weather-based access restrictions<sup>53</sup>; permitting<sup>54</sup>; and rules about the “types and quantities of fishing gear, fishing vessels, or equipment” that can be used.<sup>55</sup> “[N]one of the[se] measures . . . look anything like the funding scheme” in the herring monitoring program.<sup>56</sup> In fact, apart from permit fees,<sup>57</sup> the only express reference (though indirect) to stand-alone costs in Section 1853 is the requirement that “mitigation measures” exist to *limit* the economic impact of regulations on fishermen and their communities.<sup>58</sup> Maintaining IFM requires hewing to a potentially absurd reading of the MSA that provides no principled limit to what the Council can require of fishermen.<sup>59</sup> That cannot be right—and it certainly does not reflect the “best reading” of the law.<sup>60</sup>

### III. Rescission of IFM should be comprehensive.

The Council should **eliminate the Atlantic herring IFM program** entirely. The program is costly, ineffective, and does not reflect the best reading of the MSA. But in so doing the Council and NOAA Fisheries must be sure to **rescind both the implementing regulations** found at 50 C.F.R. § 648.11(m) *and* the **herring-specific measures introduced into the Atlantic herring FMP** as part of the Omnibus Amendment. Eliminating provisions from the Code of Federal Regulations, without simultaneously adjusting the underlying FMP, opens the door to future re-implementation of IFM without adequate procedural safeguards, either under Section 1853(c) or via direct secretarial action under Section 1855(d).

These changes to the herring FMP would **optimally be undertaken in tandem with other deregulatory actions**, such as elimination of (1) herring slippage requirements; (2) river herring/shad time-and-area closure measures; (3) specification guidelines requiring the allocation of catch to the

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<sup>51</sup> 16 U.S.C. § 1853(a)(3), (a)(15), (b)(3).

<sup>52</sup> *Id.* § 1853(a)(5).

<sup>53</sup> *Id.* § 1853(a)(6).

<sup>54</sup> *Id.* § 1853(b)(1).

<sup>55</sup> *Id.* § 1853(b)(4).

<sup>56</sup> *Loper Bright*, 45 F.4th at 377 (Walker, J., dissenting).

<sup>57</sup> *See* 16 U.S.C. § 1853(b)(1).

<sup>58</sup> *Id.* § 1853(a)(9)(A). Courts have stressed that cost-benefit considerations are relevant to the scope of discretionary authority provided by Section 1853(b)(14), too. *See, e.g., Mexican Gulf Fishing Co.*, 60 F.4th at 966. The demonstrated ineffectiveness of the herring IFM program—and the low probability that future programs will be created pursuant to the Omnibus Amendment—cuts in favor of rescission, given the high costs of implementation.

<sup>59</sup> *See Loper Bright*, 45 F. 4th at 377 (Walker, J., dissenting).

<sup>60</sup> “If text and context supply two strikes against” the legal basis for IFM, statutory “history offers a third” and fatal blow. *Harrington*, 144 S. Ct. at 2086. The evolution of the MSA suggests Congress intentionally declined to authorize IFM outside the three specific instances previously mentioned. *See supra* note 45. The decision to permit industry-funded observing in the North Pacific as part of the Fishery Conservation Amendments of 1990 is especially informative. *See* § 118(a), 104 Stat. at 4447. In that same bill, Congress created Section 1853(b)(8) to allow for observers to “be carried” on boats. *See id.* § 109(b)(2), 104 Stat. at 4448. If Congress intended to provide the Council and NOAA with broad discretion to impose industry funding under Section 1853(b)(8)—that is, as part of *any* FMP—it would have been unnecessary for it to provide a separate, specific grant of authority to the North Pacific Council. *See Intel Corp. Inv. Pol’y Comm. v. Sulyma*, 589 U.S. 178, 189 (2020) (“When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.” (citation omitted)). Congress has also repeatedly considered (and rejected) amendments to the MSA that would have created blanket authority for IFM. *See, e.g.,* H.R. 5018, 109th Cong. § 9(b) (2006); H.R. 39, 104th Cong. § 9(b)(4) (1995); H.R. 1554, 101st Cong. § 2(a)(3) (1989).

Canadian fixed-gear sector; and (4) the requirement for herring vessels to have an observer onboard before fishing in groundfish closed areas. The Council had presumed many of these measures would work in tandem with a functioning IFM program.

Finally, the Council should consider **concurrent rescission of the “omnibus” measures** of the Omnibus Amendment, namely, the regulations codified at 50 C.F.R. 648.11(g). These provisions, while often treated as merely “administrative,” are potentially costly and raise concerns under Executive Order 14276. If new IFM programs were approved in the future, the expected economic impact on fishing businesses and communities would be uniformly negative: “[T]here would be *direct negative economic impacts to fishing vessels*[.]”<sup>61</sup> The potential for simultaneous IFM in multiple fisheries raises distinct concerns over the impacts of *overlapping* coverage requirements. The Council acknowledged that impact in the mackerel fishery,<sup>62</sup> but removed its analysis from the Omnibus Amendment after the Mid-Atlantic Council withdrew from the amendment process.<sup>63</sup> As far as we are aware, the Council has never seriously explored the potential economic impact of IFM in a future scenario where it has been widely implemented across the region.<sup>64</sup> Some vessels, which declare into multiple fisheries on a given trip, could be subject to near-continuous paid monitoring.

There are also serious questions over the continued purpose of the “omnibus” measures, assuming the herring IFM program is eliminated. For example, there would no longer be any need for a prioritization process governing the agency’s IFM cost responsibilities,<sup>65</sup> especially since the Atlantic scallop and groundfish observer programs exist independent of the Omnibus Amendment. The “omnibus” measures would instead be left **entirely unused and effectively superseded**. Comprehensive rescission of the Omnibus Amendment would have the added benefit of **respecting the best reading of the MSA**, which disallows IFM except in limited circumstances,<sup>66</sup> and providing some assurance to our clients and other fishermen that IFM is **unlikely to come back** anytime soon. This would also avoid the likelihood of further litigation against the Council and NOAA Fisheries.

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Thank you for your prompt consideration of our comments. Once again, we respectfully request the Council:

- **Rescind all IFM measures in the Atlantic herring FMP, along with the relevant implementing regulations;**

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<sup>61</sup> OMNIBUS at 180; *see id.* at 9 & 304; *cf.* 85 Fed. Reg. at 7,424.

<sup>62</sup> NEW ENG. FISHERY MGMT. COUNCIL & MID-ATL. FISHERY MGMT. COUNCIL, [DRAFT] INDUSTRY-FUNDED MONITORING OMNIBUS AMEND. at 301 (Sept. 2016), *available at* [https://d23h0vhsm26o6d.cloudfront.net/2\\_IndustryFundedMonitoringAmendmentdatedSept16.pdf](https://d23h0vhsm26o6d.cloudfront.net/2_IndustryFundedMonitoringAmendmentdatedSept16.pdf).

<sup>63</sup> Mid-Atl. Fishery Mgmt. Council, October 2018 Council Meeting Summary at 1–2 (Oct. 2018), *available at* <https://static1.squarespace.com/static/511cdc7fe4b00307a2628ac6/t/5bd085894785d3c856c4dbe3/1540392329466/2018-10+Council+Report.pdf>.

<sup>64</sup> The Council made only meager efforts to consider how its preferred herring alternatives would impact the mackerel fleet, as well as other vessels incidentally declaring into herring. *See* OMNIBUS at 250–51.

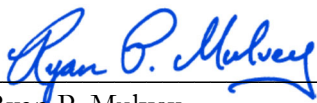
<sup>65</sup> *See* 50 C.F.R. § 648.11(g)(4).

<sup>66</sup> *See supra* pages 3–6.

- **Eliminate herring slippage requirements, river herring/shad time-and-area closure measures, specification guidelines allocating catch to the Canadian fixed-gear sector, and the observer requirement for access to groundfish closed areas; and,**
- **Rescind the remainder of the Omnibus Amendment and its final rule.**

Please do not hesitate to contact us with any questions or concerns.

Sincerely,

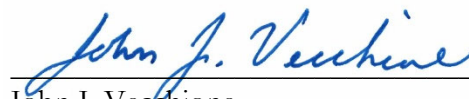


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CC:

Mr. Eugenio Piñeiro Soler  
Assistant Administrator for Fisheries  
National Marine Fisheries Service

Mr. Michael Pentony  
Regional Administrator  
Greater Atlantic Regional Fisheries Office

# Exhibit 1

100 Davisville Pier  
North Kingstown, RI 02852

Dr. Cate O'Keefe, Executive Director  
50 Water Street, Mill 2  
Newburyport, MA 01950

**Comments RE: Executive Order (EO) 14276, “Restoring American Seafood  
Competitiveness”**

Dear Dr. O'Keefe,

Thank you for providing an opportunity for public comment regarding Executive Order 14276, an initiative we believe has the potential to benefit our industry and business. Below are our recommendations to the New England Fishery Management Council and Trump Administration for action pursuant to the objectives of this Order:

1. Northeast Canyons and Seamounts Marine National Monument:

In 2016, the Obama Administration issued Presidential Proclamation 9496, imposing the Northeast Canyons and Seamounts Marine Monument on historic and productive U.S. commercial fishing grounds, over protests from the fishing industry and U.S. fisheries management bodies. In March 2017, leadership from every federal Regional Fishery Management Council in the United States wrote to President Trump during his first term advocating for fisheries management measures to be vested solely in the established Magnuson-Stevens Act process, not a Monument designation under the Antiquities Act of 1906, which was never intended to be used for fisheries management. In April 2017, President Trump issued Executive Order 13792, “Presidential Executive Order on the Review of Designations Under the Antiquities Act”,<sup>1</sup> directing the Secretary of Interior to conduct of review of certain Monument designations made by previous Administrations under the Antiquities Act, including the Northeast Canyons and Seamounts Marine National Monument. In his final report, the Secretary of Interior recommended that commercial fishing be allowed to continue in the Monument, managed by the Regional Fishery Management Councils under the authority of the Magnuson-Stevens Act, since fisheries are strictly regulated and Monument designation of fishing grounds is unnecessary for conservation of species or management of fisheries. In June 2020, President Trump issued Presidential Proclamation 10049, “Modifying The Northeast

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<sup>1</sup> [Federal Register :: Review of Designations Under the Antiquities Act](#)

Canyons And Seamounts Marine National Monument,”<sup>2</sup> implementing the Secretary of Interior’s recommendation and reopening the Monument to commercial fishing. However, in October 2021, the Biden Administration issued Presidential Proclamation 10287,<sup>3</sup> reversed President Trump’s order, and again prohibited commercial fishing in the Monument. It then codified the fishing prohibition through regulation in the Code of Federal Regulations.<sup>4</sup> The Monument designation regarding the commercial fishing prohibition must be reversed and all implementation regulations in the Code of Federal Regulations eliminated.<sup>5</sup>

## 2. Hudson Canyon National Marine Sanctuary and National Marine Sanctuary Nomination Process:

In 2015, President Obama re-opened the “public nomination process” for establishing new National Marine Sanctuaries, which had been eliminated for 20 years by that point.<sup>6</sup> Allowing the “public” to nominate new sanctuaries meant that environmental groups intent on regulation and elimination of various fisheries could nominate sanctuaries on important fishing grounds. In 2016, during the first Trump Administration, the Wildlife Conservation Society nominated Hudson Canyon, a critical commercial fishing ground, as a proposed National Marine Sanctuary and included in its nomination document advocacy for regulation of certain fisheries and gear types, including those of Seafreeze vessels, as a focus of future Sanctuary designation.<sup>7</sup> The Mid Atlantic Fishery Management Council opposed this designation and the Trump Administration declined to begin any designation process at that time.<sup>8</sup> In 2022, Wildlife Conservation Society again nominated the area using the same information, and the Biden Administration has since moved forward with the designation process, with NOAA creating a Hudson Sanctuary Advisory Council. While we have participated on this Advisory Council, we maintain all our previous concerns with this potential designation. The only industry that will experience regulation as the result of a final nomination of the Hudson Canyon is the fishing industry. The intent is evident in the Wildlife Conservation Society Sanctuary nomination document, which states that fishing “probably represents the most immediate and direct threat to the living resources and

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<sup>2</sup> [Federal Register :: Modifying the Northeast Canyons and Seamounts Marine National Monument](#)

<sup>3</sup> [Federal Register :: Northeast Canyons and Seamounts Marine National Monument](#)

<sup>4</sup> [50 CFR 600.10](#).

<sup>5</sup> See [50 CFR 600.10](#)

<sup>6</sup> See [Protecting Vital Waters as Marine Sanctuaries | whitehouse.gov](#) and [Sanctuary Nomination Process Guide and Checklist | Sanctuary Nomination Process](#)

<sup>7</sup> See <https://nominate.noaa.gov/media/documents/hudson-canyon.pdf>; specifically page 19, where the document alleges fishing is the most immediate and direct threat to living marine resources and habitats in the area, with an emphasis on trawl fisheries.

<sup>8</sup> See [MAFMC+Hudson+Sanctuary+Comment+Letter+26+April+2017.pdf](#).

habitats”, and that “[t]rawling can be particularly damaging”.<sup>9</sup> Sanctuaries may create more regulation over time as part of the Sanctuary review process. Therefore, even if restrictions do not exist in the initial designation, these may be introduced at a later date once the Sanctuary is designated. The commercial fishing industry cannot withstand more regulation now or in the future, particularly in the Hudson Canyon area which is home to a wide variety of fisheries, including significant trawl fisheries.<sup>10</sup> The designation process of Hudson Canyon as a National Marine Sanctuary must end, and the citizen nomination process of Marine Sanctuary designation that the Obama Administration opened must be reversed. Without an elimination of the citizen nomination process, the nomination of new Sanctuaries with new regulations will only continue by environmentalist organizations, to the detriment of U.S. fisheries. While the Hudson Canyon National Marine Sanctuary is not located in the New England Council region of jurisdiction, it would affect multiple New England managed species and significant numbers of vessels homeported in New England.

### 3. Permanent Moratorium on all Offshore Wind Development in the Greater Atlantic Region:

Executive Order 14276 specifically names “selling our fishing grounds to foreign offshore wind companies” as one of the major factors restricting domestic fisheries. We could not agree more. We have fought offshore wind development on our commercial fishing grounds since the Obama Administration. We encourage the Trump Administration to void all existing offshore wind leases issued via the Obama Smart from the Start Program,<sup>11</sup> which, together with the Biden Administration’s 2022 NEPA Screening Criteria for offshore wind project reviews<sup>12</sup> violated the Outer Continental Shelf Lands Act Subsection 8(p)(4) and the Trump Administration’s Solicitor Memo M-37086. BOEM has already leased dozens of offshore wind leases from the Gulf of Maine to North Carolina on commercial fishing grounds,<sup>13</sup> and the Biden Administration has approved 11 of these projects already, right up

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<sup>9</sup> See [hudson-canyon.pdf](#), p. 19.

<sup>10</sup> For more information on the fisheries that take place in the Hudson Canyon, economic information on those fisheries, and other documentation, see the Mid Atlantic Fishery Management Council’s Proposed Designation of Hudson Canyon National Marine Sanctuary at [Proposed Designation of Hudson Canyon National Marine Sanctuary — Mid-Atlantic Fishery Management Council](#).

<sup>11</sup> See <sup>11</sup> See [Salazar Launches ‘Smart from the Start’ Initiative to Speed Offshore Wind Energy Development off the Atlantic Coast | U.S. Department of the Interior](#).

<sup>12</sup> See [Process for Identifying Alternatives for Environmental Reviews of Offshore Wind Construction and Operations Plans pursuant to the National Environmental Policy Act \(NEPA\)](#)

<sup>13</sup> See <https://boem.maps.arcgis.com/apps/instant/sidebar/index.html?appid=e2079773d85b43059abf15a16bce7aa7&locale=en>.

until three days before President Trump’s 2024 inauguration,<sup>14</sup> as well as identified the entire Central Atlantic from 3 nautical miles from shore to the edge of the U.S. Continental Shelf for offshore wind leasing.<sup>15</sup> If these leases are to undergo construction, even in the future after the current Trump Administration, the future of the U.S. commercial fishing industry will be at risk. Therefore, we request that the Trump Administration issue a Permanent Moratorium for all Construction and Development of Offshore Wind in the Greater Atlantic Region, to protect the future of U.S. commercial fisheries, and to work with Congress to enact corresponding legislation.

#### 4. Elimination of Industry Funded Monitoring in the Greater Atlantic Region:

Seafreeze commercial fishing vessels F/V Relentless and F/V Persistence were plaintiffs in the recent *Relentless Inc v. Department of Commerce* which together with *Loper Bright Enterprises, et al. v Raimondo* overturned the longstanding and damaging Chevron Deference at the U.S. Supreme Court in 2024.<sup>16</sup> This case was brought due to the extreme financial impacts of the New England Fishery Management Council’s Industry Funded Monitoring Omnibus Amendment for the Atlantic herring fishery and particularly our vessels attempting to fish herring simultaneously with other managed species, including those not managed by the New England Council. The length of Seafreeze freezer trawler vessel trips compared to those of all other vessels operating in the Atlantic herring fishery, combined with our unique fishing operations, mean that the Council’s Industry Funded Monitoring Amendment affected Seafreeze vessels in a disproportionate manner to all other Atlantic herring vessels. That Amendment was approved and implemented by National Marine Fisheries Service (NMFS)<sup>17</sup> because the agency, together with the Council, wished to deploy more observers in the Atlantic herring fishery than Congress had authorized funding for. The Industry Funded Monitoring Amendment for the Atlantic herring fishery and other Greater Atlantic Region fisheries should be abolished in its entirety, or the power of the Congressional purse will have no control over fisheries management in the Greater Atlantic region neither now nor in the future. Passing agency costs directly onto industry itself, when Congress doesn’t authorize funding levels for things the agency wishes to pursue, is not economically sustainable for the commercial fishing industry.

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<sup>14</sup> See <https://maritime-executive.com/article/biden-administration-makes-final-moves-to-advance-offshore-wind-power> and <https://maritime-executive.com/article/biden-administration-makes-final-moves-to-advance-offshore-wind-power>.

<sup>15</sup> See Central Atlantic 2 Call Area at <https://www.boem.gov/renewable-energy/state-activities/central-atlantic>.

<sup>16</sup> See [In Landmark Victory for Civil Liberties, NCLA Persuades Supreme Court to Overturn Chevron Deference - New Civil Liberties Alliance](#) and [Relentless Inc., et al. v. U.S. Dept. of Commerce, et al. - New Civil Liberties Alliance](#)

<sup>17</sup> See [Industry-Funded Monitoring \(IFM\) Omnibus Amendment - Library - NEFMC](#)

Abolishing the IFM Amendment in its entirety would reduce undue burdens on domestic fishing; foreign vessels do not adhere to such onerous requirements, which are the definition of overregulation.

5. Permanent Elimination of Council Development of Herring Amendment 10:

As we have continually reiterated at the Herring Advisory Panel, Amendment 10 is a recreation of Herring Amendment 8 which was defeated in court for the exact same rationale as that espoused by Herring Amendment 10. Not only would the amendment result in overregulation and more restricted access to the herring fishery vessels, but it is a waste of Council time and resources. This is made evident by the fact that the Council, in order to work on issues that actually have value, temporarily suspended the action to focus on these other issues.<sup>18</sup> Additionally, as we have continued to remind the Council, the river herring and shad issues purportedly to be addressed by the amendment would serve to do only one thing: eliminate the Rhode Island small mesh bottom trawl herring fishery. Eliminating fisheries is the exact opposite of what is being considered in the Executive Order. Therefore, we request that all further development of this action be discontinued.

6. Returning the Saltonstall Kennedy Act funding to its original purpose:

Presidential Executive Order 14276, “Restoring American Seafood Competitiveness” directs the Secretary of Commerce, the Secretary of Health and Human Services, and Secretary of Agriculture to work together to accomplish this purpose, including the development and implementation of an America First Seafood Strategy to promote the marketing and sale of U.S. fishery products. U.S. commercial fishery profits have experienced a sharp decline since 2015 and in 2025 are at their lowest ever.<sup>19</sup> Part of this decline can be attributed to NOAA’s mismanagement of the Saltonstall Kennedy Act funds, which are actually designed specifically for this purpose- marketing and sale of U.S. fishery products, development of U.S. fisheries, and a balancing of the US seafood trade deficit. As a result, domestically produced seafood has continually lost domestic market share to cheaper imports, which will only continue unless this issue is addressed.

The Saltonstall Kennedy Act establishes what is commonly known as the “S-K Fund”, officially the “Promote and Develop Fisheries Products Account”, into which 30% of all gross import duties on seafood is deposited, according to the law. It was designed to balance the seafood trade deficit and make U.S. fisheries competitive in the marketplace. As the Trump Administration implements tariffs, this account will grow even beyond its current levels. This money is transferred from the Secretary of Agriculture to the Secretary

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<sup>18</sup> See <https://www.nefmc.org/library/herring-amendment-10-2>.

<sup>19</sup> See [State of the Ecosystem Mid-Atlantic 2025](#), slide 16.

of Commerce and “shall be maintained” in the fund “only for...use by the Secretary [of Commerce] (i) to provide financial assistance for the purpose of carrying out fisheries research and development projects...(ii) to implement the national fisheries research and development program”, which projects and program are to include research and development on aspects of U.S. fisheries including but not limited to harvesting, processing, marketing and associated infrastructures.<sup>20</sup> According to a 1983 amendment of the Saltonstall Kennedy Act, a minimum of 60% of each year’s USDA transfer to NMFS must go to “make direct industry assistance grants to develop the United States fisheries and to expand domestic and foreign markets for United States fishery products”.<sup>21</sup>

However, this is never done; instead NMFS pillages the account to fund basic agency responsibilities. S-K dollars are annually transferred into NOAA’s Operations, Research and Facilities (ORF) Account for NMFS’ internal use, and the majority of the funds allocated to promoting the U.S. fishing industry as dictated by the Act never see the light of day.<sup>22</sup> According to a Congressional Research Service report for Congress containing information through 2004, “the S-K program has never allocated the minimum amount...specified by law for industry projects” since 1982.<sup>23</sup> Several attempts at legislation to amend the Act have been made, but none successfully.<sup>24</sup>

The law also makes it very clear that “Notwithstanding any other provisions of law, all moneys in the fund shall be used exclusively for the purpose of promoting United States fisheries in accordance with the provisions of this section, and no such moneys shall be transferred from the fund for any other purpose.”<sup>25</sup> These transfers to the ORF account contravene the Act. According to the 2025 NOAA Budget, the amount transferred from the Department of Agriculture into the S-K Fund in 2024 was \$377,363,000, of which

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<sup>20</sup> See <https://legcounsel.house.gov/Comps/76-696.pdf>. The Act also funded at that time a fishery reinvestment and fishing capacity reduction program.

<sup>21</sup> See [15 USC 713c-3: Promotion of the free flow of domestically produced fishery products](#)

<sup>22</sup> See <http://congressionalresearch.com/RS21799/document.php?study=Saltonstall-Kennedy+Fishery+Funding>.

<sup>23</sup> See <http://congressionalresearch.com/RS21799/document.php?study=Saltonstall-Kennedy+Fishery+Funding>. As of 1983, 60% of all S-K funds are to be used for industry projects. See P.L. 97-424, Section 423 at <https://www.gpo.gov/fdsys/pkg/STATUTE-96/pdf/STATUTE-96-Pg2097.pdf>. Also see <https://legcounsel.house.gov/Comps/76-696.pdf> at Section 2(e).

<sup>24</sup> See [Saltonstall-Kennedy Act: Background and Issues](#)

<sup>25</sup> Ibid. The section states that the Secretary shall use the balance of the moneys- after the 60% in direct industry grants- to finance “those activities which are directly related to development of the United States fisheries pursuant to subsection (d) of this section”. Section (d) is the National Fisheries Research and Development Program, which is supposed to conduct research and development on aspects of U.S. fisheries “including, but not limited to, harvesting, processing, marketing, and associated infrastructures”. That would apparently be contrary to how NMFS is currently using the funding, according to its budget reports- a.k.a., for expanding annual stock assessments, survey and monitoring projects, fish information networks, interjurisdictional fisheries grants.

\$344,901,00 was transferred into NOAA's ORF general account.<sup>26</sup> In 2025, NOAA's budget estimated that \$377,363,000 will be transferred into the "Promote and Develop Fisheries" account, and plans to take 100% of the money for its general operations, leaving \$0 for fisheries marketing and promotion as mandated by the Act.<sup>27</sup> This is simply unacceptable.

As NMFS has never used the money as Congress directed, the 60% of the funds directed specifically for marketing purposes should be transferred from NMFS, which does not have a marketing division, to the Department of Agriculture's Agricultural Marketing Services, which has the skills to develop a national seafood marketing program similar to the Checkoff programs it manages for other U.S. food products, with the exception that such a program would be funded by the S-K money rather than voluntary industry contributions.<sup>28</sup> The 40% remaining funds should be used by NMFS for fisheries research conducted by the agency's Cooperative Research Program, and no other agency programs or divisions. Prior Administrations zeroed out Cooperative Research Program funding, and it is imperative that this division- which benefits fishermen as well as science and stocks- be not only funded but elevated as one of the most crucial agency programs and that with the most benefit to the fishing industry. It should not only be funded but expanded.

As the Executive Order states, "Nearly 90 percent of seafood on our shelves is now imported, and the seafood trade deficit stands at over \$20 billion. The erosion of American seafood competitiveness at the hands of unfair foreign trade practices must end."<sup>29</sup> However, we must not only end unfair foreign trade practices; we must end unfair domestic trade practices. NMFS's emptying of the Saltonstall Kennedy fund, designed to balance the U.S. seafood trade deficit by marketing and developing U.S. seafood products- the very goals of the Executive Order, has put American seafood producers at a disadvantage for decades. The erosion of American seafood competitiveness at the hands of the U.S. government must end.

Thank you for your consideration of these issues.

Sincerely,

Meghan Lapp

Fisheries Liaison, Seafreeze Ltd, Seafreeze Shoreside

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<sup>26</sup> See [NOAA FY 2025 Congressional Budget Justification](#), p. NMFS-136.

<sup>27</sup> "Activity: Promote and Develop Fisheries Products For FY 2025, NOAA estimates that a total of \$377,363 will be transferred from the Department of Agriculture to the Promote and Develop account, after accounting for sequestration and prior year recoveries. NOAA requests to transfer \$377,363 from the Promote and Develop account to the Operations, Research, and Facilities (ORF) account, leaving \$0 for the Saltonstall-Kennedy (SK) grant program in FY 2025." See [NOAA FY 2025 Congressional Budget Justification](#), p. NMFS-137.

<sup>28</sup> <https://www.ams.usda.gov/rules-regulations/research-promotion>.

<sup>29</sup> <https://www.whitehouse.gov/presidential-actions/2025/04/restoring-american-seafood-competitiveness/>.

# Exhibit 2

# LUND'S FISHERIES



*Wild caught product of USA*

*Managing the Needs of our Customers Through our Commitment to Sustainable Fisheries*

August 15, 2025

Dr. Cate O'Keefe, Executive Director  
New England Fishery Management Council  
50 Water St #2, Newburyport, MA 01950  
Re: Executive Order (EO) 14276, "[Restoring American Seafood Competitiveness.](#)"

Dear Dr. O'Keefe:

Thank you for the opportunity to provide you and Council members with our comments in support of the opportunities provided to the region's commercial fisheries by Executive Order 14276.

Lund's Fisheries, Inc. is a family-owned, vertically integrated harvester, processor and distributor of fresh and frozen seafood, located in Cape May, NJ, producing seafood and bait products since 1954. We purchase and distribute nearly 75 million pounds of fresh and frozen fish annually. Strategically located in the heart of the Mid-Atlantic fishing grounds, Lund's Fisheries proudly distributes fresh and frozen seafood nationally to food service, retail and wholesale distributors, while our frozen exports extend to global markets. We have about 30 fishing vessels delivering a variety of seafood to our facility year-round. Many of these vessels call Cape May their home port. Several are company-owned, and we also work with independent vessels landing from Rhode Island, New York, Virginia, and North Carolina. Our east coast fishing grounds extend from the Gulf of Maine to Georges Bank, and south through Cape Hatteras, NC.

## **Elimination of Industry-Funded Observer Coverage in the Greater Atlantic Region**

The National Marine Fisheries Service continues to argue in the Courts that this regulatory cost is simply a cost of doing business, dismissing legislative history and statutory construction, and relying on the MSA's §1853(b)'s Necessary and Appropriate clause.

***Our company and vessels supported *Loper Bright Enterprises, et al. v Raimondo* in opposing the IFM amendment, arguing Congress has only approved IFM in three specific instances, as part of the Magnuson Stevens Fishery Conservation and Management Act (MSA); for fishing vessels operating in the North Pacific region, on foreign fishing vessels operating in the U.S. EEZ, and for Limited Access Privilege Program (LAPP) fisheries, such as the surf clam and ocean quahog fisheries under MAFMC management.***

# LUND'S FISHERIES



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In considering this case, the Supreme Court, in 2024, used it to overturn the Chevron Doctrine long used in the Courts to defer to Administrative Agencies' interpretation of the statutes controlling their activity. Even so, a lower Court in the RI District, ignoring the MSA's clear statutory language, ruled against the similar Seafreeze case, *Relentless Inc v Department of Congress*, on July 15, 2025. Loper Bright is still under consideration at the DC appeals court although we are very concerned about the outcome in Relentless and appeal to the Council and the Administration to keep any current or future IFM initiatives from being successful at the NEFMC.

Lund's Fisheries is a founding member of the Sustainable Fisheries Coalition, an unincorporated fishing association comprised of participants in the Atlantic Herring Fishery. This is perhaps the most over-regulated fishery on the East Coast, as demonstrated by the regulatory issues at play in the Loper Bright and Relentless cases.

*As a SFC member, we support the recommendations to eliminate the slippage regulations requiring vessels to relocate 15 miles away when dogfish may clog a pump, for example, and the requirement prohibiting vessels from fishing in a Northeast Multispecies Closed Area – which was allowed for several years since these boats do not fish on the bottom or catch groundfish; two wholly arbitrary measures. The SFC's May 12, 2025, letter to OMB Director Russell Vought provides additional details and is attached.*

*In addition, we ask that the Council permanently set aside Herring Amendment 10 and commit to not establishing river herring & shad time and area closures, as an alternative to the existing catch caps, and refrain from using Atlantic herring buffer zones as a management tool again, in compliance with the Massachusetts District Court's March 29, 2022 decision to vacate the inshore Mid-water trawl restricted area measure of Herring Amendment 8.*

## **National Marine Monuments authority must remain under MSA.**

In October 2021, the Biden Administration issued Presidential Proclamation 10287 nullifying President Trump's Presidential Proclamation 10049 (June 2020), "Modifying the Northeast Canyons and Seamounts Marine National Monument." The Biden proclamation not only banned commercial fishing in the Monument, but it also codified the fishing prohibition through regulation in the Code of Federal Regulations.

*The Monument designation regarding the commercial fishing prohibition must be reversed and all implementation regulations in the Code of Federal Regulations eliminated (50 CFR 600.10).*

# LUND'S FISHERIES



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## **The nomination process of Hudson Canyon as a National Marine Sanctuary must be reversed.**

In 2015, President Obama re-opened the “public nomination process” for establishing new National Marine Sanctuaries, allowing the “public” to nominate new sanctuaries. In 2016, during the first Trump Administration, the Wildlife Conservation Society nominated Hudson Canyon, as a proposed National Marine Sanctuary. The Mid Atlantic Fishery Management Council opposed this designation, and the first Trump Administration declined to support the designation.

In 2022, the Hudson Canyon was nominated again, and the Biden Administration has since moved forward with the designation process, with NOAA creating a Hudson Sanctuary Advisory Council that is now federally staffed. If the Hudson Canyon becomes a National Marine Sanctuary, additional restrictions will be implemented in regional fisheries, and we have no idea what the size and boundaries of the sanctuary could be.

***The nomination process of Hudson Canyon as a National Marine Sanctuary must end. The citizen nomination process of Marine Sanctuary designation that the Obama Administration opened, must be reversed. This can be found at 15 CFR Part 922 [Docket No. 130405334-3717-02] on the date of 6/13/2014.***

## **Reverse a decades-old dispute between the U.S. Fish and Wildlife Service (USFWS) and the NMFS over the question of whether East Coast and West Coast squid resources are either a ‘shellfish’ or a ‘fishery product’.**

The U.S. Fish and Wildlife Service (USFWS) is authorized to regulate wildlife imports/exports, there is a specific exemption for “shellfish and fishery products” that are harvested and under the authority of a federal and state Fishery Management Plan.

However, the USFWS has refused to recognize federally managed and harvested squid species (i.e. calamari) as either “shellfish” or a “fishery product”, despite that squid are technically a shellfish (mollusk) and are managed as a fishery under the Magnuson Stevens Act, with full blown federal Fishery Management Plans.

Furthermore, USFWS chooses to ignore these facts and does not care about the burden placed on the commercial fishing industry. Squid harvested by the U.S. commercial fishing industry are not an “endangered species” The USFWS has consistently refused to consider any reclassification to accept our squid as a “fishery product”.

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*The USFWS must be required to lift the inspection burden on squid exports and reclassify the 3 domestic squid species as shellfish or fishery products. The original rule, published on 8/25/1980 at 45 FR 56673, can be found at 50 CFR Part 14. Below we have included a lengthy administrative record on this topic. We sincerely appreciate MAFMC staff's (Mary Sabo) significant support in seeking this administrative change in recent years and we now ask for the NEFMC's support.*



Supplemental-USFW  
S-Squid-Memo\_2020

## **Support a permanent moratorium on all Offshore Wind development in the Greater Atlantic Region**

*The EO identifies “selling our fishing grounds to foreign offshore wind companies” as one of the major factors restricting Atlantic domestic fisheries. We agree and ask the Administration to void all existing offshore wind leases issued via the Obama Smart from the Start Program.*

## **Allow scallop fishery access to the Northern Edge HAPC; closed since 1994**

*Annual scallop revenue lost to this closure is estimated at \$30 to \$50 million dollars. There is no existing ecological rationale for continued closure of the HAPC and no evidence that the closure is meaningfully contributing to groundfish recovery. A rotational harvest approach to this area is needed. Lobsters in the HAPC are found in complex habitat along the Eastern boundary where scallop access would not be targeted.*

**Finally, we ask the Council to evaluate current vessel baseline restrictions, for federal limited access permit holders, and consider initiating a joint management action with the MAFMC to modify current requirements and create additional flexibility in replacing aging vessels in the Region.**

Thank you for your attention to and consideration of our comments and concerns.

With best regards,

*Wayne Reichle, President*

[wreichle@lundsfish.com](mailto:wreichle@lundsfish.com)

Attachment: SFC to OBM, May 12, 2025



June 17, 2026

Dr. Cate O'Keefe  
Executive Director  
New England Fishery Management Council  
50 Water Street, Mill 2  
Newburyport, MA 01950

**RE: Response to Request to Reconsider Atlantic Herring Industry-Funded Monitoring Regulations**

Dear Dr. O'Keefe, Chairman Salerno, and Council Members,

Wild Oceans is an organization founded by conservation-minded sportfishermen dedicated to the conservation of forage fish for the future of fishing. Our programs focus on linking ocean prey to their pelagic predators to advance ecosystem-based fishery management. We support initiatives that reduce bycatch of non-target species, protect essential fish habitats and spawning grounds, and conserve our ocean resources for future generations.

Thank you for the opportunity to comment on NOAA's May 1, 2026 letter requesting that the New England Fishery Management Council reconsider its prior decision not to initiate an action to rescind the Atlantic herring Industry-Funded Monitoring (IFM) program regulations. We strongly oppose any action to rescind or weaken the Atlantic herring IFM provisions. The Council and the public spent years developing, refining, and evaluating these monitoring measures through an extensive and deliberative public process. The underlying conservation, accountability, and scientific needs that justified IFM remain as important today as when the program was adopted.

The Atlantic herring IFM program was developed in response to longstanding deficiencies in monitoring coverage and catch accounting in the herring and mackerel fisheries. Wild Oceans commented during the IFM Omnibus Amendment process that the uncertainty surrounding incidental catch estimates—particularly for depleted and ecologically important river herring and shad stocks—demonstrates the critical need for enhanced monitoring programs capable of accurately documenting both retained and discarded catch. Addressing this uncertainty is even more important today as the Council considers specifications for the Atlantic herring fishery and

time/area closures to reduce the bycatch of river herring and shad in the fishery. The decline in Atlantic herring has resulted in a decline in the use of industrial trawl vessels to fish for river herring and shad in New England. This coincides with an increased presence of river herring and shad in natal rivers. The IFM program will help the Council monitor the bycatch in the Atlantic herring fishery and validate any time/area closures.

The original IFM measures reflected years of analysis, public testimony, and stakeholder engagement associated with Amendment 5 to the Atlantic Herring Fishery Management Plan and Amendment 14 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. Wild Oceans noted that these measures were “the result of five years of amendment development informed by comments and testimony from tens of thousands of stakeholders.” The Council ultimately determined that enhanced monitoring was necessary to improve accountability, support effective catch caps, and provide reliable bycatch information for protected and depleted species.

The fundamental scientific and conservation rationale supporting IFM has not changed. River herring and shad continue to mix with Atlantic herring and mackerel fisheries at sea, and interactions can be episodic but substantial. We continue to emphasize that “100% coverage on Category A and B vessels is necessary for an accurate accounting of incidental catch” due to the high-volume nature of these fisheries and the variability of bycatch events. Inadequate monitoring undermines the ability of managers and the public to accurately assess catch levels, evaluate the effectiveness of catch caps, or understand impacts on depleted stocks. In practice, because so few trips are observed, NOAA Fisheries relies heavily on “transition rates” rather than observed catch rates in a given year to extrapolate river herring and shad catch, masking seasonal and inter-annual variability and likely missing important bycatch events.

Moreover, enhanced observer coverage provides benefits extending beyond catch accounting. Northeast Fisheries Observer Program (NEFOP) data collection is essential for improving stock assessments and conservation science, including the collection of biological samples, age data, and genetic information necessary to improve river herring and shad assessments and conservation strategies. These data collection needs remain unresolved and cannot be satisfied without robust monitoring coverage.

The argument advanced that IFM should be rescinded because it has not yet achieved full implementation turns the problem on its head. The inability to fully implement IFM due to funding and administrative constraints does not mean that the monitoring is not needed. Instead, it demonstrates the importance of maintaining the regulatory framework and providing the funding necessary to implement it so we can rebuild the Atlantic herring and mackerel fisheries and protect the fragile gains in river herring and shad populations. Eliminating the program entirely would abandon the very conservation and accountability objectives that the Council previously determined were essential. The impacts of failing to implement the program are being felt by fishermen across New England and the Mid-Atlantic suffering who are suffering due to the collapse of the Atlantic herring and mackerel stocks.

The need and support for the program has been demonstrated through the Council's recent public processes for both annual priorities and Executive Order 14276. The Council carefully considered whether to revisit IFM during its discussions on Executive Order 14276 and ultimately decided not to prioritize an action to rescind the herring IFM provisions. That decision was not made casually. The Council engaged in extensive discussion regarding priorities, workload, conservation needs, and the implications of Executive Order 14276 before deciding not to pursue an action that would end IFM. Reopening this question immediately after the Council completed that process—while in the middle of completing its current full workplan—undermines the Council's role in setting its priorities through the Magnuson-Stevens Act's transparent public process with top-down agendas driven by behind-the-scenes D.C. lobbying.

Finally, removing IFM would not eliminate the need for accurate monitoring and accountability in the Atlantic herring fishery. The Council and NMFS remain responsible for ensuring that catch limits prevent overfishing and rebuild stocks, that bycatch is minimized, and that the Magnuson-Stevens Act's other conservation objectives are met using the best available scientific information. Weakening monitoring requirements would further threaten the Council's efforts to rebuild Atlantic herring and mackerel and improve river herring and shad populations at precisely the time we are facing a forage fish crisis that is negatively affecting the ocean ecosystem and countless recreationally and commercially valuable predator stocks.

For all of these reasons, we urge the Council to reaffirm its decision not to rescind the Atlantic herring IFM regulations. The Council has already conducted a thorough public process and appropriately determined that eliminating IFM is not a priority action. The conservation, scientific, and accountability needs that justified IFM remain valid today, and the appropriate NOAA response would be to provide the necessary funding to implement the program, including by providing 100% observer coverage on all Category A and B vessels.

Thank you for considering these comments.

Sincerely,

A handwritten signature in blue ink that reads "Theresa Labriola". The signature is written in a cursive, flowing style.

Theresa Labriola  
President  
Wild Oceans