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Elon Musk  
DEPARTMENT OF GOVERNMENT EFFICIENCY

**RE: Reforming the Bureaucracy that Is Destroying American Fisheries**

Mr. Musk,

President Donald J. Trump tasked you with a mission that is vital to our Nation's success: reforming the government so that it is efficient and cost-effective, works for the American people, and promotes American enterprise in the face of foreign competition.

One area that is in urgent need of your attention is the American fishing industry—and the bloated bureaucracy and overregulation that is destroying our fisheries. It is a problem that profoundly impacts thousands of American workers and our trade competition with foreign adversaries. Fishing is one of the most dangerous and challenging trades in existence, but it is an invaluable source of food and commerce. It is an art that has been passed from generation to generation, dating back to colonial America. And it has been critical to America's commercial growth.

Despite its storied history, the American fishing industry is facing an existential threat from its own government. In that vein, we write on behalf of the New England Fishermen's Stewardship Association ("NEFSA"), a fishing advocacy group that represents wild harvesters in all fisheries within New England communities. Founded in the Spring of 2023, the Association boasts hundreds of members. It is dedicated to educating the public about how best to manage our seafood resources through sound science and best practices, with a view toward economic well-being, ecosystem sustainability, conservation, and U.S. food security.

The purpose of this Letter is to call to your attention the federal government's misguided overregulation that is destroying the American fishing industry and sacrificing American jobs. Instead of balancing conservation and economic well-being, the focus has turned solely to climate change at the expense of every other consideration (including the impact marine life). Overregulation by climate-focused, ideological bureaucrats is destroying the fishing industry, making it nearly impossible for working-class fishermen to make a living. In turn, it has allowed foreign competitors to fill the gap and expand their commercial fishing markets, all while failing to achieve its intended purpose. This is precisely that type of issue that DOGE was designed to tackle.

## EXECUTIVE SUMMARY

Our purpose in this Letter is to highlight the dire impact that overregulation has had on American fisheries. Federal regulation of fisheries has expanded into a massive, complicated bureaucracy. There are literally thousands of unnecessary, extraneous bureaucrats and a complex web of jurisdiction and regulation. The regulations themselves are profoundly unscientific and ineffective. This Letter describes the root of these problems, explains how and why bureaucracy is harming the fishing industry, and offers recommendations for fixing these critical problems.

In **Part I**, we outline the history and growth of the regulatory leviathan that now governs fishing, which was born out of the Magnuson-Stevens Fishery Conservation and Management Act of 1976 (“MSA”). Initially intended to protect American fisherman from foreign encroachment, the MSA has been co-opted by bureaucrats and its original purpose has been distorted. From 1976 to 2025, the MSA is the story of uncontrolled bureaucratic growth and overreach. Moreover, the regulators are unaccountable to the people and unconstitutionally appointed under modern Supreme Court doctrine.

In **Part II**, we describe the economic harms that climate-focused, ideological bureaucrats are causing American fisherman. The economic numbers, as reported by the federal government, speak for themselves. The declines in volume and profits are staggering. At the same time, foreign competitors from Canada and Europe are reaping the benefit, leading to a massive trade imbalance. On his first day in office, President Trump made “America First” the official trade policy of the federal government, and he promised to “investigate the causes of our country’s large and persistent annual trade deficits.”<sup>1</sup> To carry out this mandate, DOGE should investigate the glaring trade imbalance in the fishing industry.

In **Part III**, we explain why these economic declines are unnecessary and avoidable. Rather than achieve fishery-stock preservation and environmental goals, the American fishing bureaucracy is sprinting away from these objectives by relying on incomplete science and bad data. Put simply, the bureaucrats in charge of fishing don’t know how to fish. They don’t understand fishing stock and are functioning under the mistaken assumption that stricter regulation will always enhance preservation. This is incorrect, as is evidenced by several misguided rules and regulations, which we describe below.

In **Part IV**, we call upon DOGE to investigate the fishing bureaucracy, and we offer several recommendations. First, the government should eliminate NOAA’s Office for Coastal Management (“OCM”). OCM has been captured by environmentalist groups that do not understand fishing. DOGE should also review NOAA Fisheries’ Endangered Species Act (“ESA”) staffing and streamline its

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<sup>1</sup> See America First Trade Policy (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/america-first-trade-policy/>.

functions, getting rid of unnecessary bloat. DOGE should also help update NOAA Fisheries' archaic Data Management and Use systems, which ultimately mislead regulators with bad data. Finally, DOGE should limit or reallocate NOAA Fisheries' substantial funding to promote and support the fishing industry, rather than destroy it to the benefit of foreign competitors.

## **I. The History of the Leviathan Fishing Bureaucracy.**

The National Oceanic and Atmospheric Administration (“NOAA”), housed within the Department of Commerce, is the primary agency responsible for regulating the U.S. fishing industry. It is also tasked with assessing and predicting changes in the climate, monitoring the conditions of coasts and bodies of water, and researching and conserving marine ecosystems and resources.

Within the NOAA are six subagencies: the National Environmental Satellite, Data, and Information Service (“NESDIS”); the National Marine Fisheries Service (“NMFS”); the National Ocean Service (“NOS”); the National Weather Service (“NWS”); the Office of Oceanic and Atmospheric Research (“OAR”); and the Office of Marine and Aviation Operations (“OMAO”). Our focus is on the NMFS, otherwise known as “NOAA Fisheries,” the subagency that exercises the greatest regulatory authority over the U.S. fishing industry.

### **A. The Federal Government’s Historical Hands-Off Approach to Fishing Regulation**

There was not always the NOAA Fisheries, or any federal fishing regulator for that matter. For most of America’s history, fishing regulation was handled primarily by the individual states. In the late 1800s, President Ulysses S. Grant established a limited commission for studying fishing stock—but the federal government did not claim any regulatory authority over fisheries.<sup>2</sup>

In 1945, President Truman expressed the need for stock management beyond the U.S. three-mile territorial sea, but, again, the federal government did not claim exclusive jurisdiction over fisheries resources.<sup>3</sup>

By the 1950s and 1960s, foreign fishing vessels began operating in waters adjacent to the United States and pillaging the stock on which U.S. fisherman relied. This foreign encroachment prompted the United States to declare jurisdiction over fisheries resources within two-hundred miles of the coastline.<sup>4</sup>

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<sup>2</sup> <https://www.fisheries.noaa.gov/new-england-mid-atlantic/about-us/century-conservation-brief-history-noaa-fisheries>

<sup>3</sup> <https://crsreports.congress.gov/product/pdf/R/R43565/4>

<sup>4</sup> *Id.*

## **B. Congress Responds to Foreign Encroachment in 1976**

In response to foreign competition and encroachment, Congress enacted what is now referred to as the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”), which created a new federal architecture for fishing regulation.<sup>5</sup> By 1977, the Act put all marine fishery resources within two-hundred miles of all U.S. coasts under federal jurisdiction.<sup>6</sup> The primary federal agency tasked with fishing management was the NOAA Fisheries.

As part of the 1977 MSA amendment, Congress created eight Regional Fishery Management Councils within NOAA Fisheries.<sup>7</sup> Each regional council is composed of representatives from each state in the region, a regional director, and members appointed by the Secretary of Commerce, who are removable only “for cause” and only upon the recommendation of two-thirds of the voting Council.<sup>8</sup> The regional councils include the following:

- North Pacific Fishery Management Council
- Pacific Fishery Management Council
- Western Pacific Fishery Management Council
- Gulf of Mexico Fishery Management Council
- Caribbean Fishery Management Council
- South Atlantic Fishery Management Council
- Mid-Atlantic Fishery Management Council
- New England Fishery Management Council

The MSA has been amended three times—in 1996, 2007, and 2018. The 1996 amendment, referred to as the Sustainable Fisheries Act (“SFA”), substantially altered the MSA. It focused primarily on reducing overfishing and protecting fish habitats by (among other things) requiring each fishery-management plan to specify criteria for assessing when a stock is overfished and to create an approach for rebuilding the stock.<sup>9</sup> The SFA also established statutory definitions for what constitutes “overfishing” and “overfished.” The SFA added three new National Standards that fishery management plans must meet, including minimizing the economic impact of conservation and management measures, minimizing bycatch, and promoting safety of human life at sea. It also required that NOAA Fisheries,

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> 16 U.S.C. § 1852(a).

<sup>8</sup> 16 U.S.C. § 1852(c).

<sup>9</sup> [https://www.lsu.edu/seagrantfish/pdfs/brds/SFA\\_finalreport.pdf](https://www.lsu.edu/seagrantfish/pdfs/brds/SFA_finalreport.pdf)

councils, and the National Academy of the Sciences produce more frequent substantive reports for Congress.

Roughly two decades later, Congress passed the MSA Reauthorization Act (“MSA-RA”), which, among other things, established annual catch limits for various species and instituted a series of accountability measures. It also attempted to promote international coordination in tackling illegal and unregulated fishing.

Finally, the Modernizing Recreational Fisheries Management Act (“MRFMA”), passed in 2018, again amended the MSA, this time adding another set of requirements for reports, studies, and guidance from the Government Accountability Office and from the Commerce Department. It also expanded the authority of the Councils by “authoriz[ing] [the Councils] to use management measures in developing a plan or proposed regulations for a recreational fishery or the recreational component of a mixed-use fishery.” These measures include establishing “extraction rates, fishing mortality targets, harvest control rules, or traditional or cultural practices of native communities in such fishery or fishery component.” These values, as determined by the Councils, ultimately influence the annual catch limits to be implemented and enforced upon fisheries by NOAA Fisheries.

In the past ten years, Congress has furnished the NOAA with between \$6.3 billion and \$7.3 billion per fiscal year in discretionary funding, in addition to several billion dollars to support particular aspects of the NOAA’s mission. The NOAA is a financial vortex: it currently swallows over *half* of the Department of Commerce’s \$12 billion budget and accounts for more than half of the department’s personnel in non-decadal Census years.

### **C. The Unrestricted and Unconstitutional Regulatory Powers of the Regional Councils**

Over several decades, the power of the NOAA’s Councils has ballooned. Based on input from various advisory and ad hoc committees, the Councils prepare Fishery Management Plans (“FMPs”) that include rules for stock-management rules, catch limits, minimum catch sizes, seasonal activities, restricted areas, and vessel permitting. The Councils also develop research priorities for NOAA Fisheries. NOAA Fisheries, in turn, assists in the nomination and appointment process of Council members and facilitates the training of new members.

The Councils have tremendous regulatory power. They can promulgate any regulations that they “deem[] necessary or appropriate for . . . implementing a [FMP] or amendment.”<sup>10</sup> And they may “conduct any other activities . . . which are necessary and appropriate to [their] functions.”<sup>11</sup> The MSA gives the Secretary of Commerce a role in the Plan process as well, but it is circumscribed. The Secretary “assist[s] the

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<sup>10</sup> 16 U.S.C. § 1853(c).

<sup>11</sup> 16 U.S.C. § 1852(h)(9).

Councils by “establish[ing] advisory guidelines” that lack “the force and effect of law.”<sup>12</sup> Further, the Secretary is required to “immediately” publish in the federal register the FMP or amendment submitted by a Council, for notice and comment period of sixty days. After that period is over, the Secretary has only a thirty-day period within which to decide whether approve, disapprove, or partially approve an FMP.<sup>13</sup> If the Secretary takes no action, the rule becomes final.<sup>14</sup> Because the Councils are typically first-movers, and the Secretary has limited time to make a decision, it gives the Councils tremendous power to set policy.

The Secretary has ability to promulgate new FMPs, but only in limited situations,<sup>15</sup> and a one-quarter bloc of a Council’s members can prevent a new Secretary from amending past plans: “The Secretary may repeal or revoke a [FMP] for a fishery under the authority of a Council only if the Council approves the repeal or revocation by a three-quarters majority of the voting members.”<sup>16</sup> For those reasons, the FMPs are incredibly powerful and entrenched rules, for which there is little political accountability in changing administrations.

Furthermore, the Councils have broad substantive power. They are responsible for implementing the annual-catch limit (“ACL”) provision of the MSA, as it applies to federally managed fish stocks. ACLs have a tremendous impact on the ability of fishermen to earn a livelihood. The Councils make recommendations regarding ACLs, which are then reviewed and approved by the Secretary of Commerce. The ACLs are then implemented and monitored by NOAA Fisheries. In addition to ACLs, fishermen are also subjected to various restrictions under the ESA, which prohibits the fishing of endangered species without a permit.

Based on this unique structure that entrenches regulatory powers within the Council, NEFSA and its members have sued the Councils, arguing that the members serve in violation of the Appointments Clause. One federal district court agreed and recently held that the “statutory provisions allowing fishery councils made up of state bureaucrat and governor-nominated members to block certain types of actions by the federal agency constitute actions of federal officers in violation of the Appointments Clause and other constitutional doctrines.” *New England Fishermen’s Stewardship Ass’n v. Raimondo*, No. 2:23-CV-00339-JAW, 2024 WL 5247893, at \*1 (D. Me. Dec. 30, 2024). Another court held that certain “Council Members are subject to unconstitutional removal restrictions.” *Arnesen v. Raimondo*, No. 1:23-CV-145-TBM-RPM, 2024 WL 377820, at \*1 (S.D. Miss. Jan. 31, 2024). This odd regulatory

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<sup>12</sup> 16 U.S.C. § 1851(b)

<sup>13</sup> 16 U.S.C. § 1854(a)(3).

<sup>14</sup> 16 U.S.C. § 1854(a)(3).

<sup>15</sup> 16 U.S.C. § 1854(c)(1).

<sup>16</sup> *Id.*



framework—intended to circumvent democratic checks and oversight—not only violates Article II, but likely other constitutional principles, such as the non-delegation doctrine and anti-commandeering principle.

In addition to NOAA Fisheries and the MSA, there are many other agencies, laws, and bureaucrats that fishermen must deal with and that further burden the industry. While the focus of this report remains on NOAA Fisheries and its ever-growing—and counterproductive—clutch over the fishing industry, fishermen currently face at least *seven* overlapping federal and state regulatory regimes, including those established not only by the MSA but by the ESA, the National Environmental Policy Act, and National Marine Sanctuaries Act.<sup>17</sup>

## II. The U.S. Fishing Industry Remains at Risk of Continued Decline.

The economic decline of the American fishing industry is staggering, and overregulation is a substantial factor in that decline. At the same time, foreign fishers are reaping the rewards and benefitting from high demand in the United States. This trade imbalance is precisely the type of issue that President Trump has a mandate to fight.

Reports indicate that the U.S. fishing industry’s revenue has dropped by a compound annual rate of 3.5 percent in the last five years, despite seafood’s increasing popularity, which in turn is driven by its numerous health benefits.<sup>18</sup> Furthermore, according to the 2022 Fisheries of the United States report (released in October 2024), were down 8.3 billion points, or 3.36 percent, and the revenues are down \$5.8 billion, or 10.42 percent.<sup>19</sup> Commercial landings, including edible (for human food) and industrial (meal, oil, and other non-edible uses), by U.S. fishermen at ports in the fifty states decreased by 223.9 million pounds, or 2.6 percent from 2021—which was a \$632.2 million, or 11 percent, drop in revenue compared to 2021.<sup>20</sup> Regionally, from 2021 to 2022 Mid-Atlantic landings decreased by 5 percent, while landings revenue decreased by 13 percent; New England landings decreased by 11 percent, while landings revenue decreased by 27 percent.<sup>21</sup>

It’s not as if seafood is suddenly unpopular. In fact, to meet a strong U.S. demand for seafood, the United States imported 6.9 billion pounds of seafood products, valued at \$29.7 billion, in 2022. But it exported only 2.5 billion pounds of

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<sup>17</sup> [https://www.wsj.com/articles/fishermen-on-the-hook-to-pay-for-their-own-regulators-1451259442?mod=article\\_inline](https://www.wsj.com/articles/fishermen-on-the-hook-to-pay-for-their-own-regulators-1451259442?mod=article_inline)

<sup>18</sup> <https://www.ibisworld.com/united-states/industry/fishing/81/>

<sup>19</sup> <https://www.fisheries.noaa.gov/foss/f?p=215:26:3154851353657:::>

<sup>20</sup> <https://s3.amazonaws.com/media.fisheries.noaa.gov/2024-11/FUS-2022-final2.pdf>

<sup>21</sup> <https://s3.amazonaws.com/media.fisheries.noaa.gov/2024-11/FUS-2022-final2.pdf>

seafood valued at \$5.5 billion.<sup>22</sup> The overall trade balance in edible seafood products in 2022 was a deficit of \$24.2 billion, up 6.1 percent from 2021.<sup>23</sup> In other words, we are importing seafood to compensate for the decline in supply resulting from overregulation.

And it's not clear to what end. Supposedly, the United States' regulatory environment was designed to protect the environment and various ecosystems. But hamstringing our own fishermen—who are subject to some of the most intense fishing regulations in the world—means depressing domestic supply, thereby forcing U.S. consumers to seek fish from less regulated foreign markets. As Meghan Lapp, a fisheries management expert at the Center for Sustainable Fisheries, recently told *The Wall Street Journal*, “[i]f you’re going to put our fishermen out of business, then you’re going to be purchasing seafood from countries with little or no regulation. So the environmental impact of relying on imports rather than U.S.-caught product, it’s actually more damaging to the environment.”<sup>24</sup>

Analyzing regions individually can help to explain the decline. Alaska’s coastline, for example, produces roughly 60 percent of America’s seafood. Its industry, however, saw a 50 percent decline in profitability between 2021 and 2023 and suffered a \$1.8 billion loss.<sup>25</sup> An “economic snapshot” by NOAA Fisheries scientists and economists found more than 38,000 job losses nationwide and a \$4.3 billion loss in total U.S. output of goods and services as a result of the decline in the Alaskan fishing industry. Alaska, Washington, Oregon, and California were most affected, with a combined loss of \$191 million in state and local tax revenues.

Though the report attributes the decline to higher costs from higher wages, higher energy prices, and higher interest rates, it is hard to see how the federal-regulation behemoth currently hamstringing Alaskan fishermen improves the situation. To put a finer point on it, Alaska’s fishermen often compete with foreign producers, as exports account for most of the Alaskan market. International competition from markets like Russia, where restrictions are minimal, has posed a serious threat to Alaskan fisheries. For instance, several Russian fisheries recently obtained Marine Stewardship Council certification “and use the trade name ‘Alaska pollock’ in marketing,” the report says. “This results in sustainable domestic fisheries having less of an edge in the global marketplace.”<sup>26</sup>

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<sup>22</sup> <https://s3.amazonaws.com/media.fisheries.noaa.gov/2024-11/FUS-2022-final2.pdf>

<sup>23</sup> <https://s3.amazonaws.com/media.fisheries.noaa.gov/2024-11/FUS-2022-final2.pdf>

<sup>24</sup> <https://www.foxnews.com/politics/new-england-fishermen-fighting-government-overreach-hope-catch-big-win-supreme-court>

<sup>25</sup> <https://www.fisheries.noaa.gov/feature-story/economic-snapshot-shows-alaska-seafood-industry-suffered-18-billion-loss-2022-2023>

<sup>26</sup> <https://www.nationalfisherman.com/alaska-seafood-industry-took-1-8-billion-hit-in-2023>



### **III. Inefficient Overregulation and Prioritizing Climate Concerns Are Killing the Fishing Industry.**

Although federal fishing regulation under the MSA began with a worthy goal—protecting American enterprise from foreign encroachment—the federal takeover of fishing regulation has resulted in the growth of a leviathan bureaucracy that is now doing just the opposite. The regime instituted by the NOAA has become so complex that it functions as a barrier to entry for fishermen. Fishing does not need to be an overly specialized trade, but bureaucrats have made it one, and now the population of fishermen is aging out. Bloated, inefficient, and captured by ideological and climate-change interests, fishing overregulation has harmed industry.

Worse, the regulation is based on bad science and economics, meaning that not only is it sacrificing industry for the sake of conservation and environmentalism, but it is also not doing much even to preserve the environment or stock. Climate-change hysteria has resulted in the establishment of projects detrimental to U.S. fishing industry by the NOAA. This is a self-inflicted disaster on our Nation’s food security that will exacerbate our dependence on food imports.

Below are a series of examples of the degree to which the NOAA’s overregulation and climate hysteria have harmed and continue to harm the U.S. fishing industry. Given the time, energy, and costs associated with some of these endeavors, it makes the utmost sense for DOGE to review the initiatives of NOAA to understand whether federal monies are, in fact, being well spent or instead being used to chase climate activists’ fantasies.

#### **A. Promulgating Rules Based on Bad or Insufficient Data**

We highlight below a series of NOAA regulations to demonstrate the degree to which NOAA has consistently caved to climate-change pressures, routinely relying on faulty or non-existent data when doing so. Rules of this nature threaten the entirety of the U.S. fishing industry. While the rules below by no means represent the universe of NOAA overreach, they provide a window into the degree to which climate alarmism has resulted in poor decision-making.

##### *i. Annual Catch Limits (“ACLs”)*

NOAA Fisheries, via the Councils, sets ACLs or quotas for certain marine species based upon data it collects from its own research vessels. The way NOAA Fisheries collects data is often unreliable and incomplete, evincing a lack of basic understanding about the species which it espouses to be studying.

For instance, last spring, NOAA Fisheries conducted research to determine the current population of various marine species along the northeast coast for future management efforts related to ACLs. NOAA Fisheries ran its trawls only in the daytime, even though several species, such as the juvenile haddock and black back, are far more active in the evening.

Its refusal to run its northeast spring bottom trawl survey measurement of fish stocks during the evening ensured that the results would be wholly incomplete and likely show a steep decline. Exacerbating the problem, NOAA Fisheries reduced the scope of its trawl significantly due to delays in beginning the trawl, further compromising the data collected.

The production of incomplete data is inexcusable. Local fishermen from NEFSA have offered to work with NOAA Fisheries in its research efforts, stating that they would be glad to host NOAA scientists and data collectors on their boats, as well as provide insight on best practices to maximize their trawls. NOAA has yet to take NEFSA up on its offer. This refusal to modernize data through industry participation, however, has stymied any improvement in the science relied upon by the NOAA, which has perpetuated uncertainty.

### *ii. Restricted Areas*

In 2023, NOAA expressed an interest in finalizing a rule under the Marine Mammal Protection Act that would expand the size of a restricted area off the coast of Maine, currently off-limits to lobstermen for three months each year. NOAA sought to expand the 9,000 square mile area, known as the “Massachusetts Restricted Area” (“MRA”), out of concern over the population of the endangered North Atlantic Right Whale. At its current size, the MRA costs the local fishing industry millions of dollars each year in revenue.

As NEFSA pointed out during the Notice and Comment Period, the proposed rule, which mirrors the rule NOAA sought to make permanent, had been in effect for two years already as an emergency rule. Despite being in effect for two years, NOAA did not rely on *any* new data to justify the promulgation of its final rule. Instead, it continued to rely on whale-distribution data from 2010 to 2020, despite changes in the migration patterns of the whales and the usage of new equipment by fishermen since 2022 that increases the “chance of right whales parting the rope (self-releasing) to reduce mortalities and serious injuries when entanglements do occur.”

Lastly, the prevalence of offshore wind projects, spearheaded by the Department of Interior’s Bureau of Ocean Energy Management (“BOEM”), suggests the possibility that whale populations are being harmed not by fishermen but by wind projects that disturb, traumatize, and displace various marine species, as several studies have shown. NOAA, however, has made scapegoats of New England fishermen, and in particular lobstermen, in its desire to finalize the rule.

### *iii. Additional Operating Limits*

In 2021, NOAA Fisheries promulgated a rule placing various operating restrictions on lobstermen, including limiting how much lobster rope trap could be in the water at any given time. This rule was based on a “biological opinion” that the agency prepared, which had concluded—based on “limited” data and “assumptions”—that lobster fisheries kill the North Atlantic Right Whale. The final rule cut in half

the number of traps a lobstermen may have in the water simultaneously.<sup>27</sup> A coalition of Maine fishermen sued the Biden Administration for the arbitrary and capricious nature of the rule, which relied on worst-case scenario, dubious data, as its justification. The D.C. Circuit ruled for the lobstermen, explaining that the agency “distort[ed]” its “scientific judgment by indulging in worst-case scenarios and pessimistic assumptions to benefit a favored side.” Indeed, there has not been a documented North Atlantic Right Whale entanglement associated with Maine lobstermen since 2004.

In 2023, NOAA proposed *another* rule purportedly looking out for the North Atlantic Right Whale. That rule prohibited all boats thirty-five feet or longer from traveling faster than 10 knots (approximately 11 mph) in the region from Massachusetts to central Florida, for up to eight months out of the year and, in certain areas, up to ninety miles offshore.<sup>28</sup> While the rule was withdrawn earlier this month, NOAA claimed it was because it “does not have sufficient time to finalize this regulation in this Administration due to the scope and volume of public comments.”<sup>29</sup> Nonetheless, the agency indicated it was not “preclude[d] . . . from taking future action, including but not limited to initiating a new rulemaking.” NEFSA submits that NOAA in reality withdrew the rule because the public comments revealed it had used dubious data and failed to consider the economic impact on smaller fishermen in its proposal.

For instance, when proposing this rule, NOAA estimated that only 9,300 boats would be affected, yet 2021 data from the U.S. Coast Guard indicated that there are 63,000 recreational saltwater boats measuring 35 to 65 feet in length. Similarly, NOAA estimated that the annual cost of the rule would have been roughly \$46 million. But studies suggest that the actual number would have been closer to \$170 million per year, as 70,000 recreational fishing trips would have been placed in jeopardy by the rule. The rule itself also posed a grave risk to the safety of smaller fishermen, who run the risk of capsizing at slower speeds or colliding with larger boats. Finally, compelling smaller crafts to install an Automatic Information System (“AIS”) so that they may be tracked by the federal government to ensure compliance introduced a host of privacy concerns.

Though the rule never became final, the entire two-year episode indicates the degree to which environmental concerns, unsupported by the data, are permitted to run rampant and effectively shape economic policy to the detriment of one of the United States’ most important industries.

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<sup>27</sup> 86 Fed. Reg. 51,970 (2021), codified at 50 C.F.R. § 229.32; *see also* 16 U.S.C. § 1387(f).

<sup>28</sup> [https://asafishing.org/wp-content/uploads/2023/04/Fact-Check\\_NOAA-Vessel-Speed-Restriction61.pdf](https://asafishing.org/wp-content/uploads/2023/04/Fact-Check_NOAA-Vessel-Speed-Restriction61.pdf)

<sup>29</sup> <https://www.govinfo.gov/content/pkg/FR-2025-01-16/pdf/2025-00718.pdf>.

## B. Imposing Cost-Prohibitive Regulations on Smaller Fishermen

In 1990, Congress amended the MSA to allow for observers on many fishing vessels to facilitate Commerce’s oversight over the U.S. fishing industry.<sup>30</sup> A little over twenty years later, NOAA Fisheries, displeased with congressional funding for said observers, spent almost a decade devising a mechanism for transferring the costs of additional observers to the U.S. fishing industry, culminating in a 2020 rule that continues to threaten the livelihood of smaller U.S. fishermen.

In 2020, the U.S. Department of Commerce, the umbrella under which NOAA Fisheries and its Councils operate, promulgated the New England Fishery Management Council’s Industry-Funded Monitoring Omnibus Amendment (“IFM”). The IFM established a rule requiring industry-funded monitors (“ASMs”) to supplement the already existing government-funded observers to monitor the herring fishery, which stretches along the coast of New England to New Jersey. Funding for these new ASMs could be provided by the government in limited cases. However, most fishermen were not eligible for such funding, and the IFM estimated that the cost-per-day of an ASM *to be incurred by the regulated party* would be approximately \$710 *per day*—thereby possibly exceeding what a fisherman might earn in a single day from fishing. An average fishing trip can span from two to fourteen days depending upon the style of fishing and whether the fisherman in question fishes for multiple species on a single trip. The result of such a regulation is that the cost of the regulation may exceed the revenue earned from any given trip.

What is most remarkable about Commerce’s decision to promulgate the rule is that it has known for some time that ASMs were not fiscally feasible for the agency due to congressional budget restraints: according to Commerce, “Budget uncertainties prevent NMFS from being able to commit to paying for increased observer coverage in the herring fishery.”<sup>31</sup> In short, the IFM is a result of NOAA Fisheries seeking more observers than Congress historically has been willing to fund.

In addition to their steep costs, these ASMs are often ill-qualified and ill-equipped for the supposed tasks they’ve been assigned. The ASMs are not required to have any marine education and often have limited training before boarding the fishing vessels. Some have never set foot on a ship before. The result is seasickness and faulty data recording. But Commerce insists that the ASMs are not the same as the government-funded “observers” because they don’t collect specimens, samples, or photos. They are, however, still federal agents performing federal, not industry, jobs and obstructing their duties is a federal crime.<sup>32</sup> It is not clear what “jobs” they are actually performing, given their limited expertise.

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<sup>30</sup> See § 1853(b)(8).

<sup>31</sup> 79 Fed. Reg. 8,786, 8,793 (Feb. 13, 2014).

<sup>32</sup> See § 1857; 50 C.F.R. § 648.14(e).

Currently, this regulation is being challenged in federal courts on the grounds that it exceeds the scope of the Administrative Procedure Act and the MSA. Having overruled *Chevron*, the Supreme Court has since remanded the case back to the lower courts to determine whether the NOAA has acted within its statutory authority. Whether it survives, the regulation remains further evidence of the unsustainable overreach of NOAA Fisheries vis-à-vis the fishermen over which it lords.

#### **IV. DOGE Should Investigate and Reform This Bureaucracy.**

Given the NOAA accounts for over half of Commerce’s budget, it is undoubtedly a ripe target for further investigation by DOGE. Indeed, DOGE was established for this very purpose—to target federal government inefficiencies that often manifest themselves as overreach.

In that same vein, NEFSA was created precisely to expose such overreach within an important sector of the domestic economy and to promote a return to the original mission held by those who once regulated the U.S. fishing industry—namely, the worthy goal of balancing conservation efforts with the economic well-being of the U.S. fishing industry. Below are a series of recommended actions for which DOGE may be best poised to advocate.

##### **A. Eliminate NOAA’s Office for Coastal Management (“OCM”)**

OCM is effectively captured by environmentalist groups such as the Regional Ocean Partnerships which has resulted in the creation of an oversupply of Marine Protected Areas (“MPAs”) that are entirely closed to fishing of any kind. MPAs sound reasonable in theory but many fail to be sufficiently targeted to protect a specific population in question. For instance, large, open air MPAs cut off access to large swaths of ocean, even though many species are highly migratory and move in and out of MPAs throughout the year.

OCM is also responsible for coordinating with states on coastal management when there are large infrastructure projects that require input from multiple, bordering states. However, OCM has failed to navigate and coordinate conflicting state policies and desires, and thus it has largely been unsuccessful in its mission. In many cases, states have wildly varying policies toward both coastal management and fishing. However, lacking any experience in the fishing industry, OCM is unable to mediate and effectuate the best policy in light of those divergent views. Moreover, because of its narrow focus on coastal management, it has failed to understand the broader ramifications of its policy choices on American fisheries. The lack of broad-based expertise at OCM leads to damaging policies.

##### **B. Update NOAA Fisheries’ Archaic Data Management and Use Systems**

As noted above, the NOAA and its Councils have often relied on old, unreliable, or incomplete data when engaging in rulemaking. For example, NOAA frequently relies on 2- to 3-year-old information, notwithstanding much faster changes in

oceanic patterns, and it often relies on data not particular to individual species that is therefore not useful for making effective, general fishing policy. Moreover, fishermen have struggled to access data from NOAA—even data that was collected by monitors on their own ships. In some cases, observer trip reports are never even published, and often NOAA provides fishermen with the wrong data when asked. This reliance on dubious data has been caused by the NOAA’s usage of archaic data management systems, and it has resulted in highly flawed and economically unsound rulemaking. The outdated systems also put fishermen’s data privacy at risk.

Among other things, NOAA should update its data processes. More importantly, it should directly involve fishermen in the data collection process, in a more cooperative and cost-effective manner. Often, fishermen already do their own data collection, which NOAA could leverage for better policymaking. Relatedly, the government could increase cooperative grants that would allow NOAA to outsource and pay fisherman for their data, leveraging the skill and comparative advantages that American fisheries have over bureaucrats who don’t know how to fish. This would also reduce the need for on-board monitors (especially for the fishermen who are partnering with and providing the government with data) and it would obviate the need to force fishermen to pay those prohibitive costs to the monitors. This would be a much more economically efficient and effective partnership system, and it would ultimately yield better policy.

### **C. Reduce and Streamline Staffing at NOAA, Particularly for ESA Functions**

DOGE has had tremendous success already in streamlining and reducing bloat in staffing throughout the government. It should implement the same productivity policies that it has at other agencies for the NOAA. While it is difficult for outsiders to evaluate the productivity and efficiency of staff, it is clear that NOAA is overstaffed and costly. DOGE has the tools to investigate, remove unproductive employees, and reduce salary costs and budgets.

NOAA staffing for ESA functions is also particularly problematic because it means that many individuals are tasked with both protecting species and managing stock. Yet there is internal tension—if not an outright conflict of policy interests—when an individual is tasked to preserve species, notwithstanding that preservation may not be optimal for stock management, and vice versa. Accordingly, the ESA staff should be move to the U.S. Fish & Wildlife Service, which is typically tasked with protection and preservation.

### **D. Reallocate NOAA Funding To Support the Fishing Industry**

Fishery regulators in nations like Canada, Iceland, and Norway understand their role is to protect fisheries and boost exports. The United States’ regulatory scheme, wholly captured by environmental interests, remains focused on climate concerns at the expense of the U.S. fishing industry—notwithstanding the original



purpose of the MSA. As noted above, the ineffective and unsupported attempt to protect the North Atlantic Right Whale nearly destroyed the lobster industry, for no good reason. And the result is depressing U.S. lobster and fishing supply overall, thereby pushing U.S. consumers to shop for fish and lobster in foreign markets that are far less restricted.

To return to the original intent of the MSA—i.e., to protect American fisherman from foreign encroachment—the government should reallocate NOAA funding toward *supporting and marketing* the American fishing industry. Among other things, the government should advocate for fish consumption as a healthy and sustainable dietary option—something that aligns well with the “Make America Healthy Again” movement. Several agencies and organizations should coordinate to make that happen, including the Department of Education, the Department of Health and Human Services, the U.S. Seafood Marketing Collaborative, and others.

The government should also consider subsidizing the fishing fleets to help modernize ships and facilitate exports, which in turn would help increase exports and provide for cleaner, safer, and more reliable fisheries. At the same time, the government should use other tools at its disposal to enhance the U.S. position in the international trade market.

### CONCLUSION

The American fishing industry has been severely damaged by overregulation and inefficient bureaucracy. Fishermen are struggling to make a living and starting to age out. The future is bleak for American fisheries, while foreign competitors are exploiting the moment.

Solving these problems and improving America’s standing in the fishing trade will be a very complicated undertaking, but it is precisely the type of mission that DOGE is suited to handle—and that it has already accomplished at other agencies. While this Letter is intended to raise the alarms, describe the root of the problems, and propose a few short-term fixes, it is also a call for broader and immediate action. There is much more investigative work to do, and we remain available to help and collaborate in any way possible.

We thank you for your consideration.

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