

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

DAVID E. FRULLA

DIRECT LINE: (202) 342-8648

EMAIL: dfrulla@kelleydrye.com

NEW YORK, NY
LOS ANGELES, CA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

May 4, 2016

Christy Goldfuss
Managing Director
White House Council on Environmental Quality
722 Jackson Pl NW
Washington, D.C. 20506

Whitley Saumweber, Ph.D.
Associate Director for Oceans and Coasts
White House Council on Environmental Quality
722 Jackson Pl NW
Washington, D.C. 20506

Dear Ms. Goldfuss and Dr. Saumweber:

We represent the Fisheries Survival Fund, an organization that consists of the vast majority of Limited Access Atlantic sea scallop vessels that are homeported from Massachusetts to North Carolina. FSF opposes the President's consideration of several areas within New England waters as marine monuments. FSF believes in, and heavily participates in, the public process of fisheries management via the New England and Mid-Atlantic Fishery Management Councils. A monument designation, with its unilateral implementation and opaque process, is the exact opposite of the fisheries management process in which we participate.

Public areas and public resources should be managed in an open and transparent manner, not an imperial stroke of the pen. Fisheries conservation and management measures developed and implemented through the Council process require compliance with a wide range of substantive and procedural legal requirements. These include the Magnuson-Stevens Fishery Conservation and Management Act, the Administrative Procedure Act, the National Environmental Policy Act, the Regulatory Flexibility Act, the Marine Mammal Protection Act, the Endangered Species Act, and the Unfunded Mandates Act, to name a few.

May 4, 2016
Page Two

Furthermore, we didn't write Executive Order 13563 which states, in relevant part:

Section 1. General Principles of Regulation. Our regulatory system must protect public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation. It must be based on the best available science. [...]

Sec. 2. Public Participation. [...] Regulations shall be adopted through a process that involves public participation. To that end, regulations shall be based, to the extent feasible and consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole. [...]

Sec. 3. Integration and Innovation. Some sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping. Greater coordination across agencies could reduce these requirements, thus reducing costs and simplifying and harmonizing rules. [...]

Sec. 4. Flexible Approaches. Where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. [...]

Sec. 5. Science. Consistent with the President's Memorandum for the Heads of Executive Departments and Agencies, "Scientific Integrity" (March 9, 2009), and its implementing guidance, each agency shall ensure the objectivity of any scientific and technological information and processes used to support the agency's regulatory actions. [...]

These standards President Obama authored describe the fisheries management process better than the monuments designation vehicle, which can be instigated and steered by a few select insiders.

We strongly urge the President not to designate any marine monuments in New England, but rather to allow the public process to continue moving forward. The New England Council is already protecting Cashes Ledge, and the Mid-Atlantic Council is already protecting deep water corals, with more action on corals to follow. Let the President's legacy be that he allowed the public to have a voice in how we manage our shared resources.

KELLEY DRYE & WARREN LLP

May 4, 2016
Page Three

In the event the Administration does not heed our call for a public process and dialogue on how best to manage our offshore waters, we strongly encourage the President to accept the proposal of the Atlantic Offshore Lobster Association (AOLA). We understand that the AOLA has provided you with coordinates denoting the shoalest area that is acceptable to them for possible management. While we cannot condone fisheries management by fiat, this proposal is at least coming from fishermen who work in these areas. No matter what area is chosen, moreover, any associated management should be tailored to the purposes and goals of that particular monument designation. Therefore, if the stated purpose of the monument designation is to protect deep water corals and ocean canyon sub-strates, then there should be no restriction on pelagic fishing, as it will have no impact on the deep corals and the ocean bottom.

We thank you for your consideration of this matter and we sincerely hope that the established public processes will be allowed to endure and prevail.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'David E. Frulla', with a long horizontal flourish extending to the right.

David E. Frulla
Andrew E. Minkiewicz

Counsel for Fisheries Survival Fund