

**TESTIMONY OF
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U.S. DEPARTMENT OF COMMERCE**

ON

NOAA FISHERIES LAW ENFORCEMENT PROGRAMS

**BEFORE THE
SUBCOMMITTEE ON INSULAR AFFAIRS, OCEANS AND WILDLIFE
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES**

WASHINGTON, D.C.

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My name is Dr. Jane Lubchenco and I am the Under Secretary of Commerce for Oceans and Atmosphere and the Administrator of the National Oceanic and Atmospheric Administration (NOAA). Thank you for the opportunity to testify before you today on the recent Inspector General report “*Review of NOAA Fisheries Enforcement Programs and Operations, Final Report No. OIG 19887*”.

BACKGROUND NOAA LAW ENFORCEMENT

NOAA has an important obligation to protect marine and coastal resources under a number of statutes. NOAA and fishermen share a common goal, captured in law, to maximize the benefits to the nation derived from our fish stocks. Proper regulation and enforcement are vital to this effort that also provides stability to coastal economies and to the marine environment on which so much depends. Commercial and recreational fishermen must believe that if they follow the rules, others will too. To be effective, the rules must be consistently — and fairly — enforced.

Congress has acknowledged the value of our marine and coastal environment through several statutes including the Magnuson-Stevens Fishery Conservation and Management Act, Endangered Species Act (ESA), Marine Mammal Protection Act, National Marine Sanctuary Act, and others. Under these statutes, NOAA has regulatory obligations to ensure the sustainability of marine resources and their habitat. A critical component of any regulatory system is enforcement.

NOAA, fishermen, and the public share a common goal of preserving and protecting the marine environment and our fisheries for the long-term health of both our fishery resources and fishing-dependent communities. NOAA’s trust resources are a public resource that should be protected through proper regulation and enforcement for the benefit of Americans, coastal economies and

the ocean environment. These responsibilities range from enforcing our fisheries and national marine sanctuaries regulations to addressing violations of the ESA and other statutes. Enforcement actions, including investigations and patrols, use of technology such as vessel monitoring systems (VMS), and partnerships with other federal agencies and states, are needed to ensure effective management and deter cheating.

The NOAA Fisheries Service Office of Law Enforcement has 164 agents for its broad and complex mission. NOAA agents enforce numerous regulations, as well as over 35 different statutes, to assure the conservation and protection of marine resources. To ensure compliance with these laws and regulations, NOAA has employed a “four pillared approach.” These four pillars include:

- 1) Traditional law enforcement methods involving investigations and patrols;
- 2) Reliance upon key partnerships, particularly our coastal state and territory conservation enforcement agencies, the United States Coast Guard, and other local and internationally based enforcement organizations;
- 3) Advanced technologies, such as the satellite-based VMS program; and
- 4) Outreach and education to promote voluntary compliance.

The United States Coast Guard is responsible for the at-sea boarding and inspection of fishing vessels and fisheries enforcement as a primary component of their mission. The Coast Guard works collaboratively with NOAA’s Law Enforcement Programs. The State Cooperative Enforcement program is also integral to NOAA enforcement capabilities. Nearly every U.S. coastal state and territory (with the exception of one — North Carolina) participates in this program, thereby providing tens of thousands of hours of dockside and at-sea fisheries patrols and inspections.

NOAA General Counsel for Enforcement and Litigation attorneys are charged with the responsibility of bringing enforcement actions for violations of the living marine resource statutes which NOAA administers. NOAA’s law enforcement agents, officers, and attorneys throughout the country are critical to ensuring mission success. As we incorporate new and innovative management measures to rebuild and sustain our Nation’s fisheries, we will rely on support and cooperation from all of our partners. NOAA is committed to accomplishing its enforcement and management goals through collaborative, transparent and fair means.

INSPECTOR GENERAL REPORT

Following concerns expressed by Members of Congress and the fishing community, I requested the Department of Commerce Inspector General (IG) conduct a review of NOAA’s Office of Law Enforcement and NOAA’s General Counsel for Enforcement and Litigation in June 2009. I requested this review because I believe in the importance of NOAA’s law enforcement efforts and felt it was time to take a fresh look at how well NOAA’s enforcement efforts are supporting

our mission to rebuild fisheries and to preserve good jobs and economic opportunity within our coastal and fishing communities.

The Inspector General's report, released on January 21, 2010, identifies a number of very serious issues with NOAA's enforcement program, and recommends several steps we should take to address deficiencies. I take this report very seriously, and I am committed to responding in a comprehensive, thoughtful, and timely manner. I have instructed the NOAA General Counsel and the National Marine Fisheries Service Assistant Administrator to address the Inspector General's recommendations and continue to work to improve our outreach and engagement with the fishing community at-large. While we develop a comprehensive plan to address the report recommendations in the 60-day timeframe, we have already taken a number of actions in response to the IG report.

Let me briefly outline some of the immediate actions we have taken, the short-term actions we are currently working on, and the long-term actions we are planning.

Immediate Actions:

First, I have instituted a freeze on the hiring of criminal investigators until an internal work force analysis is done to address the appropriate mix of criminal investigators and regulatory inspectors in the enforcement office. This action will better position the agency to address the report's observation that the Office of Law Enforcement may not have the appropriate balance of criminal investigators and regulatory inspectors.

Second, I have shifted oversight of the Civil Monetary Penalties Fund (also known as the Asset Forfeiture Fund) from NOAA's National Marine Fisheries Service (NMFS) to NOAA's Comptroller. This intermediate step will begin to address the IG's criticism that internal controls over this fund are lacking, and that efforts are required to ensure proper use and verification of the funds. The IG is in the process of conducting a Forensic Audit on this fund. We will further review this issue once we have the results of that audit.

Short-Term Actions:

In addition, I have asked for the following short-term actions:

1. To address the report's observation that NOAA lacks formal procedures for sufficiently documenting decisions regarding penalty assessments and settlements resulting in a process that provides the appearance of arbitrary decision-making (subject to compliance with applicable labor relations requirements), NOAA's General Counsel will institute higher level reviews of penalties, permit sanctions, and settlements to ensure consistency and predictability.
2. To address the perception among the regulated community and the interested public that NOAA's regulatory processes and enforcement actions are arbitrary and lack transparency, the Assistant Administrator for Fisheries, working with our Office of Communications, will improve communications on enforcement issues, particularly in the Northeast. This effort will include actions to enhance understanding of fisheries regulations as well as to ensure transparency of enforcement actions.

3. To develop forward-thinking approaches to enforcement efforts (including approaches to address the regulated communities concern of complex, conflicting, and excessive administrative burdens) and to assist NOAA leadership in formulating long-range policies for properly executing the agency's enforcement actions to protect living marine resources, I have asked NOAA General Counsel, the Assistant Administrator for Fisheries and the Director of External Affairs to develop specific objectives and detailed plans for a summit on law enforcement practices to be held no later than June 30, 2010. This effort will include a list of possible chairs and co-chairs, the identification of possible facilitators, and a communications strategy.

Long-Term Actions:

In terms of longer-term actions, by March 21, NOAA will develop strategies that:

1. Improve management information systems, including recommendations on actions to take advantage of the internet to increase transparency. This effort is intended to address current system inefficiencies and data integrity issues, and it will enable NOAA to more effectively use information to guide its decision making and increase transparency in our enforcement efforts.
2. Implement standardized procedures for setting enforcement priorities. The IG's report found that NOAA leadership has had minimal involvement in setting enforcement priorities. Implementing standard procedures for setting enforcement priorities will ensure consistency among regions while addressing regional needs.
3. Strengthen enforcement attorney operating procedures, prosecution of charged cases, and settlement actions. The IG report identified a need for NOAA to undertake revisions to applicable procedural regulations and penalty schedules. This effort will provide greater consistency and clarity, and will reduce confusion among affected industry parties.
4. Develop an outreach strategy to improve engagement with the local fisheries community and the public. In addition to improving the regulated community's understanding of fishing regulations and NOAA's enforcement activities, this action is intended to increase rapport between NOAA and fishermen, and lead to improved communications and informal problem solving.
5. Review the NMFS Office of Law Enforcement's staffing and procedures including both civil and criminal requirements, with a specific focus on ensuring that criminal procedures are not applied to civil offenses. NOAA's review should include an independent review by a body familiar with administrative and operational procedures. The IG report called into question the proportion of law enforcement staff (i.e. criminal investigators versus uniformed enforcement officers), and it suggested that staffing is disproportionate to agency functions and operational need. The plan will be responsive to this concern, and will take into account information and outcomes resulting from the actions outlined above.

These ten steps are intended to begin to respond to the issues identified by the Department of Commerce's Inspector General. NOAA will build upon these steps to develop a comprehensive plan that responds to all of the Inspector General's recommendations.

Our marine and coastal resources are of immense value to the nation. Effective, fair, and transparent enforcement is critical to ensuring the long-term sustainability of these resources. This is a high priority issue for me and I am committed to addressing the IG's recommendations and enhancing our efforts to work with the fishing industry and public in a more constructive manner.