



MEMORANDUM FOR: Lois J. Schiffer
NOAA General Counsel

FEB -3 2010

James Balsiger
Acting Assistant Administrator for Fisheries

FROM: Jane Lubchenco, Ph.D.
Under Secretary of Commerce
for Oceans and Atmosphere

SUBJECT: Follow-up to January Department of Commerce Inspector
General Report on the National Oceanic and Atmospheric
Administration's Enforcement Programs

On January 21, 2010, the National Oceanic and Atmospheric Administration (NOAA) received the Department of Commerce Inspector General's (IG) Report entitled "*Review of NOAA Fisheries Enforcement Programs and Operations, Final Report No. OIG 19887.*" The IG prepared this Report in response to my June 2, 2009, memorandum requesting a review of the policies and practices of the Office for Law Enforcement within the National Marine Fisheries Service (NMFS), and NOAA's Office of General Counsel for Enforcement and Litigation. I take this Report very seriously, and I am committed to addressing the problems identified. Successfully fulfilling our mission to conserve and manage coastal and marine resources to meet our Nation's economic, social, and environmental needs requires a strong, trusted enforcement program. This memo lays out my orders for some immediate actions and instructs the two of you to work together to develop additional actions to respond to the problems identified in the Report. I request that the NOAA General Counsel take the lead and work with the Acting Assistant Administrator for Fisheries on these assignments.

I recognize that it will take NOAA the full 60 days allowed by the IG to develop a comprehensive plan to address some long standing deficiencies. At the same time, there are a number of immediate actions that would begin to respond effectively to the Report's recommendations and to assist NOAA in improving its enforcement capabilities. Therefore we will proceed as follows. First, I am ordering a number of immediate actions in response to some of the IG's recommendations. Second, during the 60-day review period, under your leadership, NOAA will develop a comprehensive plan that includes long-term strategies and actions that respond to all of the IG's recommendations. This two-pronged approach is outlined below.

A. Immediate actions:

1. ***Subject to compliance with applicable labor relations requirements, the General Counsel shall immediately institute higher level reviews of proposed charging decisions, including proposed penalties and permit sanctions, and proposed***



settlements to ensure consistency and predictability. This action will address the Report's observation that NOAA lacks formal procedures for sufficiently documenting decisions regarding penalty assessments and settlements that result in a process that provides the appearance of arbitrary decision-making.

2. *I have ordered an immediate freeze on the hiring of criminal investigators until NMFS completes an internal work force analysis to address the appropriate mix of enforcement personnel and it is approved by me.* 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.
3. *I am ordering an immediate shift in oversight of the NMFS Civil Monetary Penalties Fund (also known as the Asset Forfeiture Fund) from 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.
4. *NMFS, in consultation with the NOAA Office of Communications, will direct resources to improve communications on enforcement issues, particularly in the Northeast.* This effort should include actions to enhance understanding of fisheries regulations as well as to ensure transparency of enforcement actions. This action is intended to begin 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.
5. *NOAA General Counsel, NMFS, and the NOAA Director of External Affairs will develop specific objectives and detailed plans for a summit on law enforcement practices to be held no later than June 30, 2010.* This effort shall include a list of possible chairs and co-chairs, the identification of possible facilitators, and a communications strategy. The IG provided examples of where the regulated community has expressed dissatisfaction with our enforcement efforts, citing complex, conflicting, and excessive administrative burdens. The summit will provide a venue to develop forward thinking approaches to enforcement efforts within NOAA to address these concerns and to assist leadership in formulating long-range policies for properly executing NOAA's enforcement actions to protect living marine resources.

B. Actions to be completed by March 21, 2010:

In preparing NOAA's comprehensive plan to address the IG Report, I request that you include each of the following items. During your review, I expect you will identify additional actions as well.

1. *NMFS Office of Law Enforcement and NOAA General Counsel, in cooperation with the NOAA Chief Information Officer, will develop a strategy*

- and schedule to 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. *The Assistant Administrator for Fisheries, with input from NOAA's leadership, will develop a plan and schedule to 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. *NOAA General Counsel for Enforcement and Litigation will develop a plan and schedule to strengthen its 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. *The Assistant Administrator for Fisheries in collaboration with the NOAA Communications Office and General Counsel for Enforcement and Litigation will develop an outreach strategy to improve engagement with the local fisheries community and the public.* In addition to improving 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. *The Assistant Administrator for Fisheries in consultation with the Director of the Workforce Management Office will formulate a plan to review the NMFS Office of Law Enforcement's staffing and procedures. This plan will explicitly address both civil and criminal requirements, with specific focus on ensuring that criminal procedures are not applied to civil offenses. Development of the plan should include appropriate independent review.* 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 initial steps will greatly assist us in resolving the issues identified by the IG, and it will build on and enhance our collaborative efforts to work with the fishing industry and other stakeholders in a more constructive manner in the future. I thank you in advance for your efforts. I look forward to working with you both as we address these critical issues and develop a comprehensive plan that responds to all of the IG's recommendations.

cc: COS - Margaret Spring
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