



January 28, 2011

Michael W. Cotter
United States Attorney
District of Montana
P.O. Box 1478
Billings, MT 59103

Dear Mr. Cotter,

We recently became aware and obtained a copy of your correspondence with Undersecretary of Commerce for Oceans and Atmosphere Jane Lubchenco dated November 24, 2010 concerning fisheries enforcement matters. Based on many years of conducting and supervising criminal investigations in a regulatory environment at the Department of Transportation, I appreciate your comments about the importance of criminal prosecutions targeting areas of chronic regulatory non-compliance. Given your interest in this matter and the concerns expressed in your correspondence, we would welcome the opportunity to speak with you directly, as Chair of the Attorney General's Advisory Council (AGAC), Environmental Crimes Working Group, and any members of the Working Group or the AGAC who may also be interested in this matter.

We have issued three public reports concerning NOAA's enforcement of fisheries regulations and one non-public report concerning the destruction of documents by NOAA law enforcement officials during the pendency of our review. We would welcome the opportunity to brief you on those reports.

There have been three Congressional hearings concerning this issue in the last year. The public record includes our testimony, as well as the testimony of Administrator Lubchenco, other NOAA officials, and representatives of the fishing industry.

The Secretary of Commerce has appointed a Special Master to review regulatory enforcement cases and provide an impartial assessment as to whether any of the regulatory penalties assessed in certain cases should be modified in any way as a matter of equity. NOAA has initiated action to effect dozens of internal reforms and personnel changes in their enforcement program based on our recommendations. For example, we recently met with NOAA officials about follow up audits we have initiated to measure the agency's progress. We learned that the time and effort necessary to implement the reforms are so extensive that it may be prudent on our part to allow NOAA more time before our follow-up audit, even though more than a year has passed since we issued our first set of recommendations.

Your correspondence includes an observation that, "the report further suggested possible workforce changes to deemphasize criminal enforcement." While I understand that there are NOAA officials who have read our report in a similar way, the true concerns we reported are that



the important criminal enforcement priorities of NOAA were at risk of being undermined by NOAA management using criminal investigators to function as regulatory inspectors. In our view, regulations should be enforced by regulatory inspectors and suspected violations of criminal statutes should be investigated by criminal investigators and prosecuted by the Department of Justice. We found that over the years at NOAA, the distinction between those two functions (regulatory enforcement versus criminal enforcement) became blurred with serious negative implications for NOAA's enforcement programs.

Before my confirmation as Inspector General, I served many years at the Department of Transportation Office of Inspector General. During that time, as Assistant Inspector General for Investigations and Deputy Inspector General, I made the investigation of suspected environmental crimes a priority. We conducted many investigations of crimes involving the transportation of hazardous materials by commercial aviation, trucking and railroads as well as civil and criminal violations involving pipelines. Many of those cases were prosecuted by the Environmental Crimes Division of the Department of Justice as well as U.S. Attorneys across the country. I have a strong appreciation for the proper enforcement of environmental crimes.

Accordingly, I would appreciate the opportunity to brief you and the members of your working group on our oversight of NOAA's enforcement program and the progress achieved so far in strengthening NOAA's program as well as the challenges that remain. If you would find such a briefing helpful or would like to discuss this matter further, please feel free to contact me 202-482-4661.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd J. Zinser". The signature is fluid and cursive, with a long horizontal stroke at the end.

Todd J. Zinser

cc: Dr. Jane Lubchenco, Undersecretary, NOAA