June 25, 2010

The Honorable John F. Tierney
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Tierney:

This responds to your letter of May 12, 2010, regarding the on-going OIG investigations regarding National Oceanic and Atmospheric Administration’s (NOAA) Office of Law Enforcement (OLE) and Office of General Counsel for Enforcement and Litigation (GCEL). Your letter seeks clarification as to the status of the OIG’s review of specific complaints related to NOAA enforcement personnel and alleged, disparate treatment of members of the fishing industry and excessive fines. We continue to look into these individual cases and will release a report following the completion of our review.

On January 21, 2010, we issued a report (Report No. OIG-19887), addressing concerns raised by the regulated fishing industry regarding NOAA’s fisheries enforcement programs and operations. Our report included information from members of the fishing community about NOAA’s fisheries enforcement and, in particular, their experience with NOAA enforcement agents and attorneys. We spoke with over 225 individuals in various parts of the country, including the Northeast, North Carolina, Florida, the west coast, and Alaska. Persons with whom we spoke included fishermen, boat captains, industry association representatives, conservation officials, Fishery Management Council members, and NOAA personnel from OLE, GCEL, and other organizations.

On page 6 of our report we summarized the industry concerns as falling into three broad categories: (1) fishing regulations are unduly complicated, unclear, and confusing; (2) NOAA’s regulatory enforcement processes are arbitrary and lack transparency; and (3) NOAA’s broad and powerful enforcement authorities have led to a fisheries enforcement posture that is overly aggressive and intrusive.

Our January report focused on the management of the programs and operations related to fisheries enforcement, not the examination of individual cases and complaints. We have been criticized by some who felt it was unfair to report these individual examples without providing NOAA the opportunity to rebut them. However, it was my view that it would have been unfair to the fishing community to have listened to their concerns and not reported what we were told. Nor did I want to delay our findings and recommendations about the overall management of the program. Notwithstanding this criticism, our report did include a summary of NOAA’s perspective (See page 10 of the report).
We included the fishermen's complaints in our report to relate what we were told by the community and to illustrate the experience some in the fishing community have had with NOAA dating back many years and the factors that have contributed to the deteriorated relationship between NOAA and the fishing community, especially in the Northeast. Our report stated that allegations of abusive treatment were not widespread. For the most part the issues we discovered appeared to us to be matters of poor performance and mismanagement. That is why our report also indicated that many of the examples cited appear more appropriate for resolution by a fisheries ombudsman, than an Inspector General investigation (See page 6 of the report).

Nonetheless, our report stated that we would complete a follow-on examination of specific complaints and corresponding NOAA enforcement case files to determine whether any additional action was necessary or recommended, either by our office or NOAA. Certain examples cited in the report are not being reviewed, including: cases in which the complainant wished to remain confidential for fear of retaliation; cases that occurred too long ago to allow sufficient evidence to be available; and cases that were involved in on-going litigation. In the course of our review we encountered several obstacles including GCEL case files and records that were inconsistent or incomplete. Despite these obstacles we will do our best to get to the bottom of these complaints and cases. As I stated above, we will issue a report following the completion of this review.

As expressed in her Congressional testimony and other public statements, Under Secretary Lubchenco concurs with the findings and recommendations in our January report and has pledged to take appropriate corrective actions. The Under Secretary has issued a response that outlines the corrective actions NOAA has taken and those it intends to take. I believe the Under Secretary is committed to the reforms she communicated to our office and to Congress. For example, on June 23, 2010, NOAA published an amendment to their civil procedures (15 CFR 904) that eliminates any presumption in favor of the civil penalty or permit sanctions assessed by NOAA. In other words, this amendment puts the burden of proof for penalties on NOAA in matters before Administrative Law Judges. This is a significant reform toward making the process more equitable.

We continue to commit substantial resources and attention to this matter. Following the three Congressional hearings in March in which we participated, we investigated and issued a report to NOAA on the shredding of OLE documents by the Director of Law Enforcement. We also commissioned a forensic review of NOAA's Asset Forfeiture Fund. We have received a report from the audit firm we hired to conduct that review and expect to issue a report based on their findings in the near future. We have also, as noted, followed through to review the complaint examples cited in our January report. Once that report is completed, we will initiate a formal review of NOAA's progress in implementing the corrective action plans to which they committed.
We appreciate the opportunity to clarify the status of our ongoing work in this area. We are sending identical responses to Senator Scott P. Brown, Senator John F. Kerry, Congressman William Delahunt and Congressman Barney Frank. If you have any questions, or we can be of further assistance, please do not hesitate to call me at (202) 482-4661.

Sincerely,

Todd J. Zinser

cc: Jane Lubchenco, Undersecretary for NOAA
June 25, 2010

The Honorable Barney Frank
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Frank:

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cc: Jane Lubchenco, Undersecretary for NOAA
June 25, 2010

The Honorable William Delahunt
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Delahunt:

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June 25, 2010

The Honorable Scott P. Brown  
United States Senate  
Washington, D.C. 20510

Dear Senator Brown:

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June 25, 2010

The Honorable John F. Kerry
United States Senate
Washington, D.C. 20510

Dear Senator Kerry:

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