



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary of Commerce
for Oceans and Atmosphere
Washington, D.C. 20230

JUN -2 2009

MEMORANDUM FOR: Todd Zinser
Department of Commerce Inspector General

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

SUBJECT: Request for Review of National Oceanic and Atmospheric
Administration Enforcement Activities

To enable us to respond to Congressional inquiries, the National Oceanic and Atmospheric Administration (NOAA) would like to ask your office to initiate a nationwide review of the policies and practices of NOAA's Office of Law Enforcement and General Counsel Office for Enforcement and Litigation.

Please contact me if you need additional information.

Attachment



Congress of the United States
Washington, DC 20515

May 1, 2009

The Honorable Jane Lubchenco
Administrator
National Oceanic and Atmospheric Administration
Room 5128
14th and Constitution Ave, NW
Washington, D.C. 20230

Dear Administrator Lubchenco:

We're writing to respectfully request the National Oceanic and Atmospheric Administration investigate allegations of excessive penalties and retaliatory actions by the Office of Law Enforcement for the Northeast Region of the National Marine Fisheries Service. Serious claims have been made about OLE practices in the Northeast, and we believe a full accounting is essential.

A recent report to Congress found a high degree of mistrust between NMFS and New England's fishing industry. The report was very useful in providing recommendations to improve this relationship. Your leadership, as exemplified in the recent case of the interim rule, has brought renewed confidence that concerns of industry will be given real consideration by the agency in implementing fishery management plans. Your assistance, however, is also needed to ensure that OLE carries out the agency's mission fairly.

We understand, for example, that forty percent of Notice of Violation and Assessment fines of \$50,000 or more assessed by OLE between 2006 and 2008 are permit, reporting, and documentation violations. These kinds of violations, which do not always bear directly on preserving the fishing resource, may be difficult to avoid in a fishery with the complexity of regulations that exists in New England. However, a fine of tens of thousands of dollars could easily bankrupt fishermen struggling to survive in this intensely competitive industry with fewer days at sea. It's essential for the fines to be proportionate to the alleged violation, and we urge you to review this matter.

As you know, fishing capacity has sharply declined in recent years, but the agency has collected total fines exceeding \$400,000 (in 1989 dollars) twelve times between 1989 and 2008. Six of those times came in the past 10 years when fishing capacity dropped steeply. The relatively constant collection of very large fines over the last two decades while capacity has been declining demands review as well.

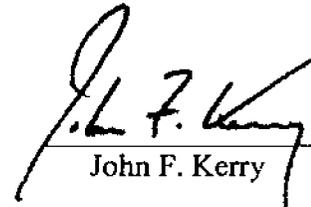
Making matters worse are the two widely publicized whale harassment and disentanglement cases in Gloucester and on Cape Cod. There is the appearance among fishermen that the federal government is being heavy handed. In the meantime, there is a perception that those responsible for the recent whale strike involving a NOAA vessel are being treated in very different manner. These cases have only worsened the current climate.

As you know, our ability to successfully manage groundfish stocks, protect marine mammals and endangered species requires the active involvement and cooperation of our fishermen. Just the simple act of identifying and disentangling endangered whales – while the responsibility of the government - requires a significant level of cooperation among fishermen. The current level of mistrust between the industry and NMFS is now at an all-time high. We believe that it is important that your office investigate and give this matter the immediate attention it deserves.

With respect and appreciation, and we thank you for considering this request.

Sincerely,


Edward M. Kennedy


John F. Kerry


John F. Tierney


William D. Delahunt


Barney Frank