



CITY OF NEW BEDFORD

SCOTT W. LANG, MAYOR

November 5, 2010

Todd Zinser, Inspector General
U.S. Department of Commerce
Office of the Inspector General
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Dear Mr. Zinser,

As the Mayor of the City of New Bedford, the number one fishing port in the United States, I write to you today to express my grave concerns regarding the fisheries regulation process in the Northeast and implore you to conduct an investigation of all parties involved with the implementation of these regulations, laws and frameworks. Your investigation should extend to National Oceanic Atmospheric Administration (NOAA), National Marine Fisheries (NMF) and the New England Fisheries Management Council (NEFMC). The Commercial fishing is the economic backbone of our City with 500 vessels working out of the Port of New Bedford and employing over 4,400 people. The fishing community has been a significant part of our identity and cultural way of life for over 300 years. It is paramount that rules and regulations that impact the livelihood of fishing communities be implemented in an open and transparent manner. Such is not the case today and fishing communities are collapsing as a consequence. I would like to take this opportunity to inform you of the irregularities in the rule making process as I understand them that merit this request.

As you are well aware in January of 2010, your offices published a scathing report on the NOAA General Counsel of Enforcement and Litigation (GCEL) and Office of Law Enforcement (OLE). This report informed us that Northeast fishermen have been fined at a magnitude 5 times greater than any other region. In July of 2010 your offices followed with a further damaging indictment of the Asset Forfeiture Fund. Subsequently, we have discovered that GCEL paid Administrative Law Judges (ALJ) out of the Asset Forfeiture Funds (60% of salaries for ALJ). In September of 2010, the most recent report was published revealing the continued crescendo of abuses against New England fishermen. It became public knowledge that fishermen were intimidated into settlements that were not equitable in terms of the alleged offense. The report reads, "GCEL's Northeast division fine assessments and number of charged violations (counts) appear excessive and intended to force respondents into settlement." In defending GCEL from the findings of your report, union attorneys revealed that GCEL received bonuses in the amount of \$44,000. The awarding of bonuses is questionable on its own merit. The conflict is further exacerbated by the fact the bonuses were given prior to the conclusion of cases. There is no reason to believe that the rest of the management system is absent this abuse of authority.

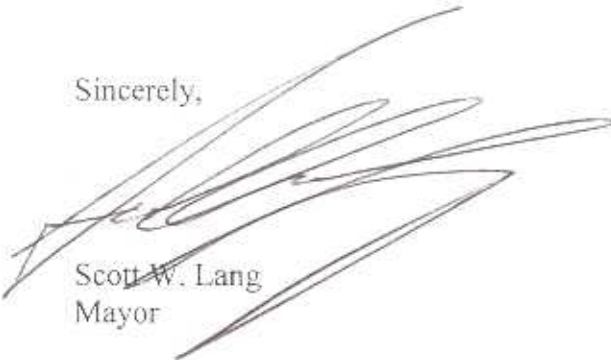
At the federal level, abuses abound with predetermined agendas by the NOAA Administrator, Jane Lubchenco, that appear to be driven by well funded interest groups and are outside the open and transparent public process mandated under the Magnuson Steven Act for development of management plans. Reference Administrator Jane Lubchenco's statement in which she states the following on catch shares "The next step is to make a rapid transition to sectors and catchshares... This next step is therefore in the Council's hands. It's your turn to take a strong leadership role and development Amendment 16 in a way that ends overfishing. I'm here to challenge you to deliver on that (Exhibit A)." Further, certain language was manipulated in Amendment 15 (Scallop Plan) after the conclusion of public hearings. Industry and objective current scientific data have been eliminated from the process and there is fundamental lack of trust in the development of regulation by the constituency most impacted by them. Lastly, the Chair of the NEFMC has stated in a letter that there are rule making conflicts and that the management system is dysfunctional (Exhibit B).

At the last NEFMC meeting of September 24-27, 2010, the NMF Assistant Administrator, Eric Schwaab, informed the Council they have hired an individual to conduct an internal of audit of the failed process. This is a clear attempt to avoid an audit by your office. Internal audits are far less effective and probative and fail to get to the root of the problem at hand (Exhibit C).

To add to the web of mismanagement, the scientific judgments on what can be caught and what can't be caught are, in our view, overly pessimistic or conservative. This has resulted in a significant number of assessments that were overturned so that higher fishing mortalities and higher yields could be obtained. The scallops that went from "overfished" to our most abundant stock and the increase of pollock by 600%, both "overnight," are glaring examples of the deliberate abuse of the regulatory system.

The lack of fair play and transparency coupled with use of stale science in the development of fisheries management has caused profound and adverse socio-economic impacts that are crippling fishing communities. It also played a role in the abuse of authority in the law enforcement sector of NOAA. I request that you open an inquiry into NOAA's and NMF's rule making processes. Thank you for your attention to this most urgent matter.

Sincerely,



Scott W. Lang
Mayor

Exhibit A

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COMMONWEALTH OF MASSACHUSETTS

TRANSCRIPT OF COMPACT DISK IN RE:

NATIONAL OCEANIC AND ATMOSPHERIC
ADMINISTRATION (NOAA)

STATEMENT OF:

ADMINISTRATOR DOCTOR JANE LUBCHENCO

Prepared for: Folan & McGlone
(John F. Folan, Esq.)
401 County Street, New Bedford,
Massachusetts 02741

Prepared by: Marc E. Laplante, Registered
Professional Reporter

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1 UNIDENTIFIED SPEAKER: I'd like to
2 introduce Doctor Lubchenco.

3 DOCTOR LUBCHENCO: Thanks, Pat,
4 and thanks, John.

5 I appreciate the Council allowing
6 me to spend a little bit of time with you. I
7 know you have a very busy agenda and I'm
8 grateful for your willingness to rearrange it
9 slightly to accommodate my interest in meeting
10 here with you today.

11 I want to do three things: One is
12 to tell you a little bit more about the
13 decisions that went into the final Interim
14 Rule that we released two days ago; Two, let
15 you know what kind of financial assistance we
16 are able to put on the table immediately with
17 the hope of additional resources down the
18 road; and Three, focus our attention on the
19 next steps in this process.

20 I want to begin by saying that I
21 think this week is focused squarely on the
22 future, the future of not just New England
23 groundfish, but the future of New England
24 fisheries in general. And in my view, that

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1 fishery should and could include a prosperous
2 fishing industry as well as healthy oceans.
3 And in my view, we cannot separate the two.
4 Achieving that future depends on the actions
5 of those of you in this room.

6 On Monday, NOAA announced an
7 Interim Rule that sets the stage for recovery,
8 recovery of both the industry and the fish.
9 The final Interim Rule responded to public
10 input. It was grounded in science and
11 economic analyses. The final Interim Rule
12 balances conservation with economic needs.
13 NOAA sees this rule as both appropriate to the
14 coming season; and more importantly, a bridge
15 to Sector Management.

16 I want each of you to know that
17 the decision about the Interim Rule was
18 recommended and supported by NOAA's fishery
19 leadership team. The changes made to the
20 January proposal were in response to the
21 public comment and additional analyses. The
22 changes should not be seen as my overruling
23 NOAA's regional leadership or efforts.
24 Although we are striving to improve our

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1 communications everywhere, I will vigorously
2 defend my team in the region. They are
3 working on your behalf and under very tough
4 circumstances. I value and support their
5 efforts and their counsel.

6 The two other reasons that I'm
7 here today are, number one, to announce NOAA's
8 intent to provide \$16 million toward this new
9 future; and two, to let the Council know that
10 the ball is now in your court and that we will
11 be watching closely.

12 Let me elaborate on both of these
13 points. Recognizing that the economic impacts
14 of this rule will indeed be significant for
15 many fishermen, for their families and for
16 their communities, I directed my staff to
17 analyze our budget to see what we could
18 contribute to get to Sector Management and to
19 mitigate some of the costs of this transition
20 period. We worked hard to find ways to
21 provide quick and meaningful help to the
22 industry through increased cooperative
23 research and by assisting the industry to set
24 up the infrastructure for the new management

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1 system based on sectors and catch shares.

2 Of the 16 million that we will
3 provide, 6 of that, \$6 million will go toward
4 cooperative research. The remainder will be
5 used to develop a data-reporting and fishery-
6 monitoring infrastructure for the new catch
7 share management system for long-term
8 sustainability and profitability. The 6
9 million that will go toward cooperative
10 research will provide opportunities for
11 fishermen to work with scientists to improve
12 surveys of fish stocks and to develop and test
13 fishing gear that targets healthy stocks.

14 Other funds will be dedicated to
15 developing new infrastructure such as
16 electronic data reporting, other immediate
17 opportunities, including hiring observers, and
18 to help us transition to a new catch-share
19 structure.

20 In addition to these resources
21 from NOAA, the Economic Develop
22 Administration, or EDA, another agency within
23 the Commerce Department, administers other
24 grant and assistance programs that are

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1 available to communities and workers impacted
2 by the economic downturn.

3 NOAA is pledging to work with EDA
4 to disseminate information about these
5 programs to the affected communities. EDA
6 provides planning, technical assistance, and
7 implementation grants to distressed
8 communities. And so that is an additional
9 opportunity that is not immediate -- a little
10 bit down the road -- but it might be an
11 important opportunity for some communities.

12 Engagement by the industry in
13 support from everyone involved in these
14 activities, such as EDA, will be critical to
15 achieving our goal of a sustainable fishery
16 and profitable industry in the long-term. We
17 are committed to continued dialog with
18 Congress, with you, and with all of our
19 constituents to lay an effective path forward.
20 I view the Interim Rule and these immediate
21 next steps as good-faith, expressions of good-
22 faith, and of interest in working
23 cooperatively to get to a better place than we
24 are right now.

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1 Number two, NOAA's ultimate goal
2 here is to protect and restore ocean
3 ecosystems, to fully recover fish stocks, and
4 to allow an economically prosperous industry
5 and vibrant coastal communities. The first
6 steps toward that end are to put this Interim
7 Rule in place and to begin to implement -- to
8 begin to mitigate some of the financial
9 consequences. The next step is to make a
10 rapid transition to sectors and catch shares.
11 Experience elsewhere in the country and around
12 the world suggests that catch shares are
13 powerful tools for restoring the health of the
14 ecosystem and getting us on a path to
15 sustainability and profitability.

16 This next step is therefore in the
17 Council's hands. It's your turn to take a
18 strong leadership role and develop Amendment
19 16 in a way that ends overfishing. I'm here
20 to challenge you to deliver on that. I hope
21 you will approve Amendment 16 at your June
22 meeting. I commit NOAA fisheries to do its
23 part to provide analyses, data, and expertise
24 to meet this deadline. But you must take

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1 responsibility. Amendment 16 should contain
2 effective measures that end overfishing and
3 rebuild stocks. The law clearly states that
4 fishery management plans must have
5 accountability measures. Delayed payments,
6 for example, balloon payments, are not what
7 Congress intended when it implemented the act.

8 As part of our ongoing commitment
9 to the fishery, we will work to better assess
10 problematic stocks such as in-shore flounders.
11 These assessments will also include
12 cooperative research projects. I envision
13 this effort as a collaborative one. But I
14 intend to hold you accountable in the public
15 view. I'm shining a light on your efforts now
16 and we will be tracking your progress. There
17 is too much at stake for us to allow delays or
18 self-interest to impact our ability to reach
19 Sector Management and eventually catch shares.
20 The two sectors that are already in place in
21 New England, I believe, serve as an example of
22 what can be accomplished when we work
23 together.

24 The longer term future beyond

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1 Amendment 16 bears careful thought and
2 planning. And we at NOAA look forward to
3 working with you to chart a course to envision
4 the right future and to chart the right path
5 to get there. I appreciate very much the
6 interactions that I've had with many of you
7 over the last, it seems like, just the last
8 few days. And I again very much appreciate
9 your willingness to let me join you here just
10 briefly this morning.

11 I want to signal to you that this
12 is a dialog; this is a cooperative exchange.
13 Although we may not agree on everything, I
14 think we all have the same long-term goals in
15 mind.

16 So I'm looking forward to the
17 decisions that you make. I will deliver on
18 the promises that we have made to you, and I
19 look forward to making good progress on these
20 efforts.

21 I am joined here this morning by
22 Pat Kurkul, whom you know well, and Steve
23 Murowski. And for specific questions that you
24 may have on some of the details for which they

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10

1 are more intimately familiar, I will take the
2 liberty of inviting them to help provide
3 responses.

4 And with those comments, John, I'm
5 happy to take some questions.

6 JOHN: Okay. I'd like to say that
7 I appreciate you taking time out of your busy
8 schedule to join us here today and to deliver
9 the message of an explanation of how we
10 arrived at the final Interim Rule; and I think
11 more importantly, the message that there is
12 some resources available to help the Council
13 and the industry transition to sector-based
14 management in Amendment 16 and I take to heart
15 your message about next steps in the future,
16 and we are going to work hard to make sure
17 that we do what is expected of us; and
18 specifically, like the mention of a
19 cooperative research and gear technology
20 research because I do think those are parts of
21 the future that will help us make our
22 decisions and help guide us to a more
23 sustainable fishery.

24 So, I'd like to thank you.

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Exhibit B

The Honorable Gary Locke
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

December 2009

Dear Secretary Locke:

The implementation of the reauthorized Magnuson Stevens Act has highlighted the urgent need to improve the fisheries management process throughout the nation. I write to ask for your help in implementing a visionary pilot in New England that is a necessary first step in making these critical improvements.

For decades, the National Marine Fisheries Service (NMFS) has worked closely with the New England Fishery Management Council to meet all relevant federal mandates. The Northeast Regional Office and the Northeast Science Center each play a crucial role in supporting the Council's work and in protecting our fisheries and fishing communities. However, the changes outlined in the reauthorized Magnuson Stevens Act have placed additional demands on each of these three entities, and it has become clear that our region's bureaucracy is unable to efficiently meet its expanded obligations.

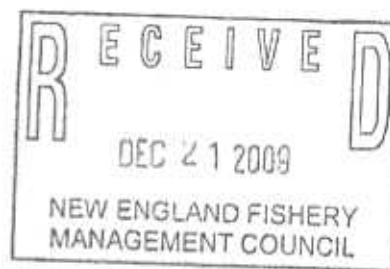
I value the work done by these institutions and recognize the tremendous challenges each faces. It is critical that their individual and collective performance be maximized if our region is to succeed. Therefore, we must carefully evaluate and seek to improve the manner in which these groups operate and interact.

One important area to be addressed is the communication and coordination among these institutions. The leaders of each entity have repeatedly acknowledged significant challenges with inter-organizational communication, but these challenges appear to be increasing rather than improving. We owe it to both the resource and the various stakeholders of the fisheries to immediately address these issues and take corrective action where appropriate.

Additionally, our bureaucracy is often driven by process and protocol rather than by mission and outcome. Over the last two decades, great strides have been made in our understanding of the design and realignment of public agency infrastructure to foster innovative, adaptive and effective management. In light of these advances, it is time to evaluate our current system, identify inefficiencies, and implement appropriate solutions.

To accomplish this, I request your support in coordinating an independent and comprehensive systems analysis and efficiency review of the three institutions, both individually and collectively. This process should be performed by an established management consultant and would ideally include:

- Extensive interviews with leadership and staff of each organization as well as a wide range of fishery stakeholders to understand their respective views on the performance of the current system and their suggestions for reforms.



- An objective and thorough evaluation of the internal structure and management practices of each entity.
- A rigorous assessment of the coordination and communication among the three entities and specific suggestions for necessary improvements.
- A detailed and public summary of the findings of this initiative as well as the resulting recommendations.

This assessment should provide a blueprint for reform within and among the three organizations in order to facilitate a more effective, performance-based approach to fishery management in New England. I believe that a successful effort could form a model that can be replicated in the other seven councils, and lead to improvements in the process of fishery management around the country.

I note that Congress recently approved the Fiscal Year 2010 budget including a line item of \$191 million dollars for Fisheries Management. Perhaps you could find a way to fund this request through the use of these funds.

I share a strong desire to improve an antiquated and ineffective bureaucracy in New England, and trust that there is enormous potential for improvement in the management of our federal fisheries. We desperately need your help in making these reforms.

Thank you for your consideration of this request; the sustainability and success of our fisheries depend on it.

Sincerely,



John Pappalardo
Chairman
New England Fishery Management Council

Cc:
Dr. Jane Lubchenco
Margaret Spring
Patricia Kurkul
Dr. Nancy Thompson
Paul Howard

Exhibit C



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Schwaab taps Preston Pate to Review Organizational Concerns in New England

NEWPORT, Rhode Island - Sept. 29, 2010 - NOAA Assistant Administrator for Fisheries Eric Schwaab announced plans to conduct a regional assessment and management review of the fishery management process in New England. The focus will be on the relationships among the New England Fishery Management Council, the Northeast Regional Office, and the Northeast Fisheries Science Center and factors affecting the effectiveness of those three entities in carrying out their responsibilities under fisheries law.

In making the announcement, Mr. Schwaab did not admit to shortcomings in the regulatory infrastructure, which has been under fire from industry and elected officials, and Fishery Management Council members. Instead he noted that every organization "no matter how large or how well run" can benefit from such a review, and said that large companies conduct these reviews "not because they believe they are performing poorly" but "to perform better".

Preston Pate, of North Carolina, a current member of the Mid-Atlantic Fishery Management Council and former chair of the Atlantic States Marine Fisheries Commission has been designated to oversee the effort. NOAA also plans to hire a management audit organization to work on the effort.

Last December, New England Fisheries Council Chair John Pappalardo wrote to Commerce Secretary Gary Locke stating "our bureaucracy is often driven by process and protocol rather than by mission and outcome." He said "it has become clear that our region's bureaucracy is unable to efficiently meet its expanded obligations" and asked the Commerce Secretary for "help in implementing a visionary pilot in New England that is a necessary first step in making these critical improvements."

Speaking of the Noting that "the leaders of each entity have repeatedly acknowledged significant challenges with inter-organizational communication, but these challenges appear to be increasing rather than improving.

Chairman Pappalardo asked that the review be conducted by a management consultant, and include:

- *Extensive interviews with leadership and staff of each organization as well as a wide range of fishery stakeholders to understand their respective views on the performance of the current system and their suggestions for reforms.*
- *An objective and thorough evaluation of the internal structure and management practices of each entity.*
- *A rigorous assessment of the coordination and communication among the three entities and specific suggestions for necessary improvements.*
- *A detailed and public summary of the findings of this initiative as well as the resulting recommendations.*

Read Mr. Pate's biography from his tenure as director of the North Carolina Division of Marine Fisheries

Read a 2004 profile of Mr. Pate from National Fisherman

The text of the announcement follows:

NOAA Assistant Administrator Eric Schwaab today announced plans by the agency to conduct a regional assessment and management review of the fishery management process in New England. The focus will be on the relationships among the New England Fishery Management Council, the Northeast Regional Office, and the Northeast Fisheries Science Center and factors affecting the effectiveness of those three entities in carrying out their responsibilities under fisheries law. It is expected that lessons learned will be more broadly applied to other regions.

"Every organization no matter how large or how well run can benefit from constructive guidance as to how it could improve its processes," said Schwaab. "This is something Fortune 500 companies do all the time, not because they believe they are performing poorly but because they want to ensure they do not miss opportunities to perform better."

A critical component of this review will be to conduct a series of interviews and focus groups to gather information on the current processes, what is working and what could be improved. Input will be sought from members and staff of the New England Fishery Management Council, NOAA Fisheries Service science and management staff, fishing industry leaders, the environmental community and state agencies.

The end result, anticipated in six to twelve months, will be a series of recommendations for improvements in coordination, communication and processes that would enable all three entities to work more efficiently and effectively to better meet our mission of ending overfishing and rebuilding sustainable fisheries.

"I designated Preston Pate, who is currently under contract with NOAA to develop a new survey program for the recreational fishery, to oversee this process," said Schwaab. "Preston is a respected voice in fisheries management and is well suited to carry out this task."

Mr. Pate is a current member of the Mid-Atlantic Fishery Management Council and former chair of the Atlantic States Marine Fisheries Commission. NOAA also plans to secure the services of an external organization experienced in management audits to work with Mr. Pate on this effort.