

**Congress of the United States**  
**Washington, DC 20515**

April 16, 2010

The Honorable Jane Lubchenco  
Administrator  
National Oceanic and Atmospheric Administration  
Herbert Clark Hoover Building, Room 5128  
14th Street and Constitution Avenue, NW  
Washington, DC 20230

Dear Administrator Lubchenco:

Thank you for your March 2010 memo to Department of Commerce Inspector General (IG) Todd Zinser outlining your plan to fix the systemic problems identified in the IG's recent investigation of the National Oceanic and Atmospheric Administration's (NOAA) fisheries law enforcement operation. Your continued attention to this issue is greatly appreciated.

We believe many of your proposals will improve accountability and transparency in the enforcement of our nation's fishing laws. However, we are concerned that elements of your plan do not adequately address major problems identified by the Inspector General, and we respectfully request that you reevaluate those elements.

First, one of the IG's principal findings was that the workforce composition of the agency's Office of Law Enforcement (OLE) should be realigned to better accomplish its mission, which is "primarily regulatory", not criminal. The IG found the number of criminal investigators "disproportionate to agency function and operational need, particularly compared with other agencies with similar mission profiles and enforcement profiles (e.g. EPA and the U.S. Fish and Wildlife Service)." That conclusion was based on the fact that over 90 percent of the OLE workforce are criminal investigators, while only 2 percent of its caseload is criminal.

We believe your plan to address this finding could be improved in the following respects, and we strongly urge you to address these issues:

1. According to Appendix #9 of your memo to the IG, Mark Spurrier – Deputy Director of OLE, is one of three team members selected to review and realign OLE's workforce. Given that OLE leadership under Dale Jones played a key role in creating the existing workforce imbalance and was principally involved in many other issues identified in the IG report, we believe it is entirely inappropriate for Mark Spurrier or any senior OLE officials who worked under Director Jones to play any role in restructuring OLE.
2. According to your memo to the IG, workforce realignment will be done on a pilot basis in one region, and then based on results of the pilot, expanded nationwide. Given the severity of the workforce imbalance, addressing this issue on a pilot basis is inadequate. There is no reason for fishermen in one region to benefit from realignment while the rest of the country suffers under the existing structure. Realignment should occur simultaneously nationwide.

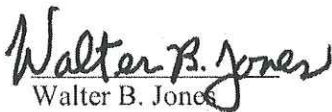
Second, the IG report found many problems with NOAA Fisheries' Office of General Counsel (GCEL), but was particularly critical of GCEL operations in the Northeast Region. This finding confirmed years of anecdotal evidence from fishermen under the jurisdiction of that office. The IG found Northeast Region fine assessments "inconsistent with those of the other five regions", and had the appearance of being "arbitrary". Specifically, "initial fine assessments totaled nearly \$5.5 million, an amount two-and-a-half times greater than the second highest region, and about five times greater than the other four regions." Furthermore, the Northeast had "the greatest percentage reduction from assessed to settled fine amounts (approximately \$5.5 million assessed to approximately \$1.6 million settled - a nearly 70-percent reduction)." Clearly, NOAA GCEL-Northeast has a problem.

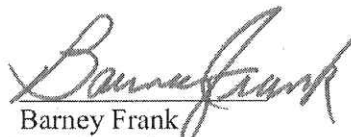
We are encouraged by many aspects of your plan to fix GCEL. However, we are very concerned that responsibility for crucial reforms has been designated to individuals who led the office most responsible for the existing problems; namely, the Northeast region. According to Appendix #9 of your memo, several people within GCEL-Northeast are named to lead teams tasked with revising GCEL's penalty schedules, penalty assessment guidance policies and procedural regulations, and with devising a system of providing explanatory notes to case files. It would seem inappropriate for these individuals to be involved in these processes at this time until the on-going investigations are complete, and we strongly encourage you to replace them with other qualified GCEL personnel from outside the Northeast region.

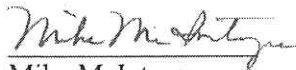
Finally, we are disappointed that your plan did not include a commitment to review pending enforcement cases. Given the depth of problems identified by the Inspector General, there is little confidence that NOAA has prosecuted fisheries cases fairly. It is imperative that all pending enforcement cases be subject to a thorough review before further action is taken. At the very least, the most egregious cases should be referred to an independent third party for a thorough review to ensure that the defendants were not unjustly prosecuted.

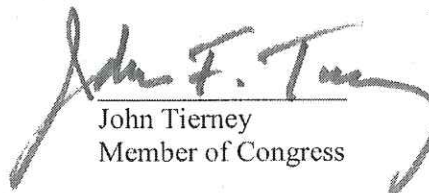
Again, thank you for commitment to fixing the issues that have plagued our nation's fisheries law enforcement, and for your consideration of these requests.

Sincerely,

  
Walter B. Jones  
Member of Congress

  
Barney Frank  
Member of Congress

  
Mike McIntyre  
Member of Congress

  
John Tierney  
Member of Congress