



COMMONWEALTH OF MASSACHUSETTS  
**THE GENERAL COURT**  
STATE HOUSE, BOSTON 02133-1053

July 30, 2010

The Honorable Eric H. Holder, Jr.  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Attorney General Holder,

We write today to urge an investigation into the actions taken by individuals and divisions within the National Oceanic and Atmospheric Administration (NOAA) with respect to NOAA's Asset Forfeiture Fund. A recent report from the U.S. Department of Commerce's Inspector General, Todd Zinser, revealed substantial diversion of the contents of the fund to pay for non-approved activities in contravention of clear statutory limits on the use of the fund. This diversion has created perverse incentives to encourage the imposition of unjust fines and impoundments against fishermen throughout the country but especially in the Northeast, and the intervention of your office is necessary to restore trust and confidence and to remove and prosecute those who violated the law.

You may know that fines assessed against and settlements collected from fishermen who have allegedly violated federal fisheries laws or regulations by NOAA, as well as other related forfeitures, go into an Asset Forfeiture Fund for use by NOAA. Federal law sets out the conditions under which the Fund's money may be used by the Administration, limiting it to "expenses directly related to investigations and civil or criminal enforcement proceedings, including any necessary expenses for equipment, training, travel, witnesses, and contracting services directly related to such investigations or proceedings." This fund is used by both the Office for Law Enforcement (OLE) and the Office of General Counsel for Enforcement and Litigation (GCEL). The operation and capital costs of the GCEL appear to be virtually entirely funded through this fund.

According to the IG's report and widespread complaints made to a host of agencies and legislative offices, GCEL's regional counsel was responsible for determining the appropriateness of the fines to be assessed and the administrative process placed the burden of proof on

respondents to establish that the fines and sanctions were inappropriate. In the course of litigation, NOAA enforcement attorneys who made the assessment consistently withheld information pertaining to the basis for the assessment of the fine. Thus, while NOAA regional counsel for the Northeast Region was assessing fines that were as much as 500% greater than those assessed in other regions, his office was benefiting directly from monies collected through fines and settlements. The IG's report indicates that assessment of the fine may have had more to do with the financial interests of OLE and GCEL rather than NOAA's stated mission.

On July 1, the Inspector General for the Department of Commerce released a report examining the finances of the asset forfeiture fund. After a forensic review of the fund by KPMG, a highly-respected accounting firm, the report shows a shocking lack of internal controls, oversight and a near total failure to account for withdrawals from the fund or to limit expenditures from the fund by anyone at NOAA.

The review's conclusions fall into three main categories. First, NOAA has no definition of the Fund or even how much money it contains. For example, NOAA provided three different definitions to the Inspector General, finally conceding that the Fund is more of an "abstract concept" than a delineated account. Although OLE had previously stated they believed the balance of the Fund to be roughly \$8.4 million, KPMG's review reveals the Fund's current balance to be over \$47 million, with approximately \$96 million collected over the past five years. This difference of an order of magnitude is a disturbing indication that NOAA is either intentionally misleading those that it purports to regulate, deliberately uncooperative or grossly incompetent in its management of these substantial public funds previously entrusted to them.

Second, it appears NOAA maintains remarkably substandard documentation of its expenses from the Fund. Given NOAA's treatment of the Fund as an "abstract concept," perhaps this is not surprising. The IG's report finds an opaque system in which fully 62% of transactions selected for review lacked required supporting documentation, and 27% lacked any record of approval. There is no standardization of the documentation process over different regions, there is no oversight of the Fund within NOAA, and at least 4,000 instances were found where transactions appeared to have been split into two to avoid single purchase limits, in violation of federal law.

More specifically, with respect to the Northeast, even though the Magnuson-Stevens Act requires that fines for violations of the Northeast Multispecies Fishery Management Plan be used to enforce that Plan, NOAA has no system in place for ensuring that these fines are so utilized.

Finally, the Inspector General's report reveals a shocking number of abuses of the AFF to pay for expenses well beyond the scope permitted by statute. As referenced above, AFF funds should only be used for expenses directly related to investigations and enforcement proceedings. However, KPMG's investigation showed that AFF funds were used for virtually all of GCEL's expenses, and a large number of OLE expenses that clearly do not fall within this

category. To cite only a few examples, OLE has purchased 22 vessels at a cost of \$2.7 million, including a \$300,000 undercover vessel that is described by the manufacturer as “luxurious” with a “beautifully appointed cabin” and whose purchase was not reviewed internally. Although OLE has only 172 personnel, 202 vehicles are owned by OLE, and virtually all of its personnel, including executives and managers who were not directly participating in investigation or enforcement proceedings, had take-home vehicles.

The Inspector General has also testified before a congressional oversight committee that the former director of OLE, Dale Jones, used the fund for inappropriate personal overseas travel. Director Jones, who was later discovered to be shredding documents relevant to the Inspector General’s investigation, was removed from his position subsequent to these discoveries, although NOAA refuses to disclose whether he remains with the Administration and, if so, in what capacity.

Ironically, the scope and magnitude of the Administration’s systemic abuse of this Fund prevented KPMG from performing any meaningful forensic accounting, as cataloguing the general boundaries of the missteps made by these NOAA branches took the full length of the firm’s contract. Thus, further investigation is certainly warranted, although the facts available to us now provide ample evidence of unacceptable conduct.

The facts and circumstances of this case warrant the appointment of a special prosecutor to investigate potential criminal and ethical violations by the NOAA Office of Law Enforcement and Office of the General Counsel for Enforcement and Litigation. It is crucial that an investigation be conducted as quickly and independently as possible, while the evidence of misdeeds is fresh and the consequences of illegal actions can be rectified in a timely fashion.

Thank you for your consideration of our views in this matter, and please do not hesitate to contact us if we may be of any assistance.

Sincerely,



Bruce Tarr  
State Senator



Ann-Margaret Ferrante  
State Representative