



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108

MARTHA COAKLEY  
ATTORNEY GENERAL

(617) 727-2200  
www.mass.gov/ago

September 28, 2011

The Honorable Rebecca M. Blank  
Acting Secretary of Commerce  
U.S. Department of Commerce  
14<sup>th</sup> Street and Constitution Avenue, NW  
Washington, D.C. 20230

**RE: Documents Pertaining to NMFS Enforcement/Northeast Regional Office**

Dear Secretary Blank,

I write today to request that the Department of Commerce ("Department"), National Oceanic and Atmospheric Administration ("NOAA"), and National Marine Fisheries Service ("NMFS") voluntarily produce and make available to our office documents pertaining to the practices of NMFS law enforcement and enforcement counsel assigned to the Northeast Regional Office that have been repeatedly requested by members of the Massachusetts Congressional delegation and attorneys.

Specifically, we request the release of all documents relied upon by the Secretary of Commerce or any subordinate in reaching a determination about disciplinary action pertaining to employees of the Department, NOAA and NMFS in response to the cases reviewed by Special Master Charles B. Swartwood, III in the "Report and Recommendation of the Special Master Concerning NOAA Enforcement Action of Certain Designated Cases." In addition, we request the release of any and all documents germane to decisions to reassign Office of Law Enforcement ("OLE") and General Counsel for Litigation and Enforcement ("GCEL") personnel assigned to the Northeast Regional Office between January 1, 2006 and December 31, 2010. This request is intended to encompass all letters, memoranda and e-mails created during the stated time period. To be clear, we are not requesting individual personnel information that is exempt pursuant to the Freedom of Information Act, 5 U.S.C. §552(b)(2). Rather, we are requesting that the Department voluntarily release all documents created by the Department, NOAA and NMFS that lead to the conclusion of Secretary Locke that there had been a "systemic failing" of managerial oversight in the Northeast Regional Office. In addition, we are requesting that you provide documents that set forth and justify the process undertaken by the Department, NOAA and NMFS to address the "systemic failing."

Significant concerns have been raised in the wake of reports issued by Department of Commerce Inspector General Todd Zinser and Special Master Swartwood. The determination by Special Master Swartwood that selected OLE and GCEL personnel engaged in "overzealous, abusive or arbitrary conduct," was disturbing. The independent reports outlined a pattern of abuses committed by law enforcement personnel under your agency's oversight that negatively impacted the livelihoods of individual fishermen, businesses, and fishing communities here in Massachusetts. Serious questions



remain about what disciplinary actions, if any, the Department, NOAA or NMFS took in response to these targeted and overzealous prosecutions. There has also been little detailed information forthcoming about how, or even if, the Department plans to address the failures of managerial oversight identified in both the Inspector General's and Special Master's reports, and acknowledged by former Secretary Locke, going forward.

These issues are of particular concern to our office because state and federal officers share enforcement responsibility. Our concerns also are not new. In 2006, our office challenged the Framework 42 regulations. During that process, we heard from numerous members of the fishing community about actions undertaken by NOAA and NMFS personnel in Massachusetts that were not only undermining regulatory efforts, but had devastated the faith and trust in the agencies by the communities in which they operated. We raised our concerns with the federal government; those concerns were confirmed by the Inspector General's and Special Master's reports.

Our office believes that further administrative corrective action should be taken to provide necessary restitution for the impacted parties, including: refund of legal costs incurred by all parties that were found to have been unfairly penalized and restitution for lost business costs incurred due to overzealous suspensions. We also believe that further investigation should be conducted into the overall loss of funds incurred by the fishing industry and communities caused by the culture of fear and "paranoia" cited by the Special Master that may have impacted the production of fishermen individually and collectively.

NOAA's actions to date have demonstrated a lack of transparency, and therefore, credibility, in addressing these important issues. Without a full accounting by the agency for the rationale behind its corrective disciplinary decisions, or lack thereof, and a transparent plan to address the lack of managerial oversight that resulted in the problematic conduct, our Commonwealth can have little confidence that the necessary changes have been made by NOAA to prevent such abusive behavior from re-occurring in the future.

Regulations are only effective and appropriate when we can ensure the integrity of those who enforce them. We believe only a full review of decisions made in the past can restore the faith of our office and the public in NOAA's enforcement efforts going forward. I am happy to discuss this request further with you at your convenience if you have questions or concerns. I look forward to your response on or before October 17, 2011.

Cordially,



Martha Coakley

Cc: Dr. Jane Lubchenco, Under Secretary of Commerce for Oceans and Atmosphere  
Eric Swaab, Assistant Administrator for Fisheries, NOAA