

We're from the government and we're here to shake you down

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Fishermen and people in fishing-dependent businesses had been complaining for years about the heavy-handed and arbitrary “justice” that was meted out by the enforcement arm of the Department of Commerce’s (DOC’s) National Oceanic and Atmospheric Administration (NOAA). Their complaints generally had to do with vindictiveness, pettiness and coercion, and ranged from the enforcement agents “on the street” to the administrative law judges that heard the cases. In the spring of 2009, bombarded with what seemed to be an ever-increasing number of complaints from their constituents, legislators from the US Congress and the Commonwealth of Massachusetts demanded that the troubled relationship between the fishing industry and the federal agencies responsible for policing it be examined.

Imagine a federal enforcement agency with a “slush fund” accumulated from fines that the agency personnel levied on the owners of small businesses for making administrative errors and spent by employees of that same agency with inadequate or non-existent controls. Imagine that this flourished under at least two Administrations and was brought into the light only after Congressional pressure initiated an investigation by the departmental Inspector General aided by an international accounting firm. And imagine that the agency and the people responsible were soundly condemned by high ranking federal legislators from both parties.

What are the odds that this would be studiously ignored by the mainstream media?

Kind of remote, wouldn't you think?

Well, welcome to post turn-of-the-century Realpolitik as brought to you by the shadow-government increasingly in charge of shaping our national environmental policies. Made up of ENGOs that are lavishly funded by “charitable” foundations with blatant corporate connections, this shadow government exists thanks to its cadre of “advocate scientists,” its pervasive influence with the print and broadcast media, and a public that, because it is largely incapable of understanding exceedingly complex environmental issues, is all too willing to accept scapegoats rather than personal responsibility.

*For a brief synopsis of the influence of ENGOs and the foundations that fund them on fisheries policy, see my 2008 column **The anti-fishing movement** from Fishing News International at http://www.fishnet-usa.com/All_Stolpe_Columns.htm#Anti-Fishing_Movement. Also see Richard Gaines article **Green activists take the wheel** in the June 28 Gloucester Daily Times - (<http://www.gloucestertimes.com/seasundersiege/x1703942597/Green-activists-take-the-wheel>) and Nancy Gaines **Getting help from the press** in the same edition (<http://www.gloucestertimes.com/fishing/x1703942593/Getting-help-from-the-press>).*

This resulted in Todd Zinser, the Inspector General of the DOC, launching an internal investigation of the NOAA Offices of Law Enforcement (OLE) and General Counsel for Enforcement and Litigation (GCEL). Note here that while Jane Lubchenco, the current head of NOAA, has insisted the this investigation moved forward at her “urging,” those of us who have been closely following the evolution of what can’t be seen as anything less than a full-blown scandal know that it began only as the result of significant bipartisan pressure on her and the Secretary of Commerce. Quoting from the memo from the Inspector General to Ms. Lubchenco on January 21, 2010 accompanying the report on his preliminary investigation “*your memorandum reiterated concerns raised by members of Congress and elected state officials about reports of heavy-handed and unfair enforcement...*”

Inspector General Zinser’s report (<http://www.oig.doc.gov/oig/reports/2010/OIG-19887.pdf>), was damning in its own right. Among a slew of other problems, this internal investigation revealed that while virtually all of the cases brought by NOAA against fishermen and people in fishing dependent businesses were noncriminal in nature (98%), its investigative workforce was overwhelmingly trained in and oriented to criminal investigations (90%). It also disclosed a so-

called Asset Forfeiture Fund (AFF) with an estimated balance of \$8.4 million and that “OLE officials are not aware of the fund’s having ever been audited.”

The Office of the Inspector General (OIG) investigation was summed up with “in short, we found systemic, nationwide issues adversely affecting NOAA’s ability to effectively carry out its mission of regulating the fishing industry. These issues have contributed significantly to a highly-charged regulatory climate and dysfunctional relationship between NOAA and the fishing industry...”

One of the recommendations of the OIG was a forensic review of the AFF. This review was in part accomplished by the international accounting firm KPMG. Of this review of AFF transactions, the OIG wrote “though it did not identify many anomalous transactions, KPMG was limited to, and relied on available supporting documentation, and did not carry out additional inquiries beyond review of existing records to identify evidence of potential irregularities.”

Regarding the paucity “of existing records to identify evidence of potential irregularities,” on March 4 the New York Times reported “House Oceans and Wildlife Subcommittee Chairwoman Madeleine Bordallo (D-Guam) said that NOAA Law Enforcement Director Dale Jones should be at least temporarily relieved of his duties, given questions over whether he may have tried to destroy documents to avoid an even more scathing report from the Commerce Department’s top investigator. ‘As the top cop at NOAA and a longtime investigator himself, Dale Jones must be acutely aware that shredding documents during a federal investigation raises serious questions about his commitment to a full and fair look at all the facts,’ Bordallo said at a subcommittee hearing on the issue yesterday. “At a time when transparency and accountability in the way our government operates is of utmost importance, this type of behavior cannot be condoned, and Mr. Jones should step aside until the IG’s investigation is completed.”

The first page of the brochure for the Third Global Fisheries Enforcement Training Workshop organized by the International MCS (Monitoring, Surveillance and Control) Network, an international organization of fisheries enforcers, started out provocatively with

**They think no one can see what they’re doing
They think no one cares
They think it doesn’t matter
They think no one will stop them
They’re wrong!**

Dale Jones, who was the Director of the Office of Enforcement at NOAA until a document shredding spree while the office was being investigated by the Department of Commerce Office of the Inspector General came to light at a Congressional hearing, is still identified on the website as the Chairman of the International MCS.

I had been under the impression that those words were directed towards those folks who were guilty of illegal, unreported or unregulated fishing. This sordid saga involving the enforcement people - and their bosses - at NOAA kind of makes me think that whoever put the brochure together might have been looking in the mirror instead.

Due to missing - and possibly intentionally shredded - records, the OIG reported that it was “unable to verify the \$8.4 million balance provided by OLE and NOAA’s Office of Finance, as cited in our January 2010 report. KPMG’s analysis suggests that the AFF’s current balance likely falls within a broader range. Based on complicated definitional, data analysis, and reconciliation efforts, KPMG found that during the period of its forensic review (January 1, 2005, through June 30, 2009), the AFF received approximately \$96 million (including interest on prior balances), while expending about \$49 million through over 82,000 transactions. This analysis suggests that the balance could be much higher than \$8.4 million.”

Bear in mind that, as the name Asset Forfeiture Fund indicates, these tens of millions of dollars weren't from federal taxes. They were from fines and seizures imposed on fishermen and on owners and employees of fishing-related businesses.

And how was the Asset Forfeiture Fund misused?

The KPMG review disclosed:

- While OLE policy did not allow vehicle purchases, only leasing and rentals, the OLE vehicle inventory listed 202 vehicles, two of which were leased and 200 of which were purchased at a cost of about \$4.6 million. These 202 vehicles were for a staff of about 172 enforcement personnel.
- While OLE policy did not authorize vessel purchases, the OLE vessel inventory listed 22 vessels purchased at a cost of nearly \$2.7 million. The most expensive vessel, advertised as “luxurious,” cost \$300,000 and its purchase, bypassing an internal review process instituted by OLE headquarters, was approved by Dale Jones, the Director of OLE at the time, *“prior to competitive procurement procedures being applied.”*
- The OLE Special Operations Fund, used to pay for covert and undercover activities (payment of rewards, purchase of evidence and information, and set-up and operation of covert businesses) lacked *“oversight and accountability, including by headquarters.”* With a case-load that was 98% noncriminal, why was there even a need for such a fund?
- While AFF funds are supposed to pay only for travel related to enforcement activities, *“between January 2005 and June 2009, OLE and GCEL charged nearly \$580,000 to the AFF for international travel to over 40 destinations. However, only about 17 percent of the cost for this travel was directly related to specific investigations or enforcement proceedings... The remaining 83 percent of the cost for such travel was for the purpose of training or attending meetings.”*
- *Approximately 4,000 OLE and GCEL purchase card transactions appeared to be split into two or more transactions (i.e., those involving the same card holder, date, vendor, and the same or different amounts) to circumvent single purchase limits and/or avoid competitive procedures—in violation of Federal Acquisition Regulation requirements that protect against improper or fraudulent purchases.*
- As reported by Saving Seafood (<http://www.savingseafood.com>) on July 12, *“in response to a Congressional inquiry last week, NOAA has confirmed that until the current fiscal year, 60% of the funds used to pay for the services of the United States Coast Guard Office of Administrative Law Judges (ALJ) who adjudicated cases brought under marine conservation laws were obtained from assets forfeited and liquidated as a result of fines levied in these cases.”*

So we have a bunch of criminal investigators in the position of paying for their unauthorized cars, boats, and international junkets and questionable “covert” operations by apprehending fishermen for noncriminal activities. And the controls on how they spent the money, once they lifted it out of the fishermen’s pockets in administrative proceedings that seem more “kangaroo court” than anything else, was apparently not being controlled, or even noticed, by anyone. Having spent 15 or so years in government, I find it impossible to imagine that anyone I worked with would have considered, or been allowed to carry out, the fiscal maneuvers that were evidently standard operating procedure in NOAA.

Kind of amazing, isn't it? Even more amazing was - and as far as I know, still is - the reaction of NOAA to what should go down in history as the most shameful episode in the 40 year existence of the Agency. Congressman John Tierney has on his website an article by Gloucester Daily Times reporter Richard Gaines that says in part "*members of the East Coast congressional fishing caucus are prepared to challenge the announced intention of top fisheries regulators to tackle systemic failings in law enforcement — including excessive penalties and possible vindictive motives — without reviewing past miscarriages of justice by federal enforcement agents against fishermen and related businesses.*" The source was a memo from Lois Schiffer, Chief Counsel of NOAA, and Eric Schwaab, NOAA Assistant Administrator for Fisheries, to NOAA Administrator Lubchenco.

In case after case, fishermen were investigated and treated as criminals... And even now this trend is apparently continuing in NOAA, with the newly appointed NOAA Chief Counsel's most notable accomplishment as an Assistant Attorney General being development of the Environment and Natural Resources Division's environmental crimes program.

Is it a stretch to suppose that much of this was due to the demonization of fishermen by the media?

How this took place, what was - and is - behind it, and how else it has affected and is affecting NOAA in carrying out its mission regarding fishermen and fishing is every bit as deserving of oversight investigation by Congress as the dysfunction endemic in the NOAA Offices of Law Enforcement and General Counsel for Enforcement and Litigation. In general that wouldn't be the case, but the leadership at NOAA in the Obama Administration, the close ties of those leaders to the foundation/ENGO world that has so successfully persecuted so many people connected with harvesting fish for fun or profit, takes this beyond the realm of the "general."

For all of the fishermen who were wrongfully criminalized, for their families, for the businesses they support, for the communities they are a part of, for all of the rest of us in or associated with fishing and for the future of fishing in the United States, we deserve answers to some crucial questions. How involved were the people now in the upper management levels of NOAA in this process? To what extent, if any, were they responsible for establishing the institutional mindset at NOAA from the outside that allowed the abuses reported by the Inspector General to flourish? And, of course, how much of that involvement, if any, has been carried over into the current management and philosophy of NOAA?

As Ms. Lubchenco's unilateral shifting of the entire management focus of NOAA to the implementation of catch shares virtually overnight illustrates so clearly, she is in a position to tremendously influence the lives and futures of millions of fishermen, the economic well-being of tens of thousands of fishing dependent businesses and a huge segment of our coastal economy. If that isn't justification for intense Congressional scrutiny, it's hard to imagine what is.

(From my January 27, 2010 Saving Seafood column "The agency that brought us Trawlgate now presents Investigate" - available at http://www.fishnet-usa.com/All_Stolpe_Columns.htm#Investigate.)

The financial loss that people suffered at the hands of this out-of-control NOAA police force was huge. Has there been or is there going to be an accounting? How many people lost their boats, their businesses, their homes, their very way of life because they were targeted by criminal investigators in search of crimes to prosecute and with a growing inventory of crime-stopping toys like new SUVs and "undercover" yachts to "protect the fish" with? And when the investigators couldn't find any real crimes to stop with their wrongfully acquired toys, they manufactured them out of petty reporting and paperwork violations in an enforcement system that had become really adept at suffocating fishermen with an avalanche of largely irrelevant paperwork years ago.

NOAA is sitting on a large pot of money which was taken from fishermen and other business people through what it's hard to see as anything but strong-arm tactics. NOAA has also let another large pot of money from those same fishermen be improperly spent without adequate safeguards and/or supervision. But the NOAA

leadership seems intent on fixing the corrupt enforcement system that it allowed to fester for so long with no concern for the victims of what was at best their inattention and at worst their active encouragement. Since this whole sordid affair started, how many dollars went to the salaries of NOAA administrators who were looking the other way when their responsibilities should have included oversight of these two renegade offices? How many of those administrators are still there (or are retired and collecting government pensions)? And more importantly, what were the total costs to the people and the businesses that were so wrongfully prosecuted - and persecuted - because of this pervasive blind spot that they conveniently developed?

Are Ms. Lubchenco and the rest of the NOAA/NMFS leadership proposing to ignore all of this? I really hope not, but if that's the case, it's up to all of us to make sure that Congress steps in post haste.

In a NY Times article following her appointment to head NOAA, Jane Lubchenco said "*fishing communities, scientists, regulators and other stakeholders in the debate need to overcome a legacy of bitterness and distrust. 'It really is pretty dysfunctional'*" Unless and until she convincingly turns her agency's enforcement efforts around, sees that agency personnel who committed or allowed to be committed the many infractions reported by the OIG and KPMG are appropriately punished, and willingly makes adequate restitution to the fishermen and others who were so unnecessarily and vindictively damaged by her agency's actions, she'll be doing nothing but adding to what has now become her very own legacy of bitterness and distrust, and the level of dysfunction is only going to increase. Some bureaucratic reshuffling isn't going to do the job that needs to be done.

- **On July 1, North Carolina Congressman Walter Jones introduced H. R. 5668, "to amend the Magnuson-Stevens Fishery Conservation and Management Act to require the use of sums received as fines, penalties, and forfeitures of property for violations of that Act or other marine resource laws to be used to reduce the Federal deficit and debt."**
- **On July 8, Massachusetts Congressmen Barney Frank and John Tierney publicly called for Jane Lubchenco's resignation.**
- **On July 9, North Carolina Congressman Walter Jones demanded that Jane Lubchenco step down as head of NOAA.**
- **On July 9, Congressman Frank, after communicating with the Obama Administration, backed away from his demand that Ms. Lubchenco resign, pending indications that she would become more responsive to the fishing industry. (For the Gloucester Times' take on this issue, see <http://www.gloucestertimes.com/opinion/x739952758/Editorial-Frank-better-be-right-on-new-White-House-fishing-priority.>)**
- **On July 12, New York Senator Charles Schumer demanded that NOAA sell unauthorized assets, return proceeds to fund, and return arbitrary and excessive fines to fishermen who committed no wrong doing or were excessively fined.**