

When it comes to the NOAA Law Enforcement scandal, “we’re sorry” doesn’t cut it

Nils E. Stolpe

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“An environment with poor internal controls, a lack of standards, contradictory regulations, and it creates a circumstance that’s ripe for exploitations. It’s what you would see in embezzlement cases, where no one’s watching the store. And if someone’s predisposed to take advantage, they do” (Gloucester mayor Carolyn Kirk in an interview with Gloucester Daily Times reporter Richard Gaines addressing the Special Master’s report on NOAA fisheries enforcement – the interview is available at http://www.savingseafood.org/wbsm/WBSM_2011-05-26.html).

Much has been made of the coordinated apologies and associated media machinations of Secretary of Commerce Gary Locke and NOAA chief Jane Lubchenco for specific enforcement abuses targeting mid-Atlantic and New England fishermen and associated businesses. Ditto for the return of some fines wrongfully levied as a result of these abuses. I was left with the distinct impression that they felt that after their not quite *mea culpas* they would be able to move on, leaving a whole bunch of satisfied fishing industry folks in their wake.

I don’t want to rain on anybody’s parade, particularly that of the DOC/NOAA/NMFS spin masters, but they weren’t even off to a good start. Sure, some of the industry people who were most egregiously impacted by what it now appears were nothing more than agency encouraged goon squads - both on the streets and behind the desks - got something back, but are they whole after their individual ordeals? Not hardly. What of their legal fees? Their loss of business? Their personal suffering and that of their families and their employees? For a first-hand grasp of how well they have fared through the ministrations of Secretary Locke and Ms. Lubchenco, invest 27 minutes into listening to the interview of NOAA victims Larry Ciulla and Larry Yacubian by Saving Seafood’s Bob Vanasse and radio station WBSM’s Phil Paleologos (http://www.savingseafood.org/wbsm/WBSM_2011-05-19.html). I can only hope that the aggrieved fishermen and business people find what Secretary Locke and Ms. Lubchenco have offered them as inadequate as I do and have the wherewithal to seek full compensation for what they’ve suffered.

But significant as these federal agency deprivations were to the 11 people and/or businesses that were singled out by the Special Master for at least partial payback, they were and are only a small part of a sordid and shameful story that continues to affect the entire domestic fishing industry and the hundreds of millions of consumers who do or should depend on it for fresh local seafood.

These out-of-control agents, attorneys and judges didn’t just arise spontaneously; they were all products of a still ongoing devolution of NOAA/NMFS from an agency primarily concerned with supporting fishermen in catching fish into one that is focused on nothing beyond protecting the fish from fishermen. It’s true that this devolution has peaked with the current leadership at NOAA/NMFS. Ms. Lubchenco is on the record (on April 7 on the website Takepart.com) with “*at the global scale, probably the one thing currently having the most impact (on the oceans) is overfishing and destructive fishing gear,*” and her oft-stated goal is fewer boats and fewer fishermen. But, sadly, this devolution has been going on for most of two decades.

It’s impossible to believe that the cops and robbers mentality that was behind law enforcement behavior so repugnant that it occasioned a public apology from a member of President Obama’s cabinet could have developed and so blatantly flourished in anything other than a “fishing and fishermen are bad” culture that percolated down from the leadership cadre at NOAA/NMFS. An apology and the return of a few hundreds of thousands of ill-gotten dollars out of a slush fund a couple of hundred times larger isn’t going to change that.

How many press releases in the same vein as one dated June 19, 2009 titled “*NOAA Notifies Gloucester Seafood Display Auction of 10-day Sanction*” by NOAA/NMFS have bombarded fishermen over the last decade (http://www.nmfs.noaa.gov/mediacenter/docs/gloucester_auction_june09.pdf)? The fact is that the trumpeting of these discredited NOAA enforcement actions by NOAA/NMFS press offices, actions judged as unacceptable by the Department of Commerce’s own Inspector General and a Special Master brought in from outside the agency, have done incalculable harm to the public perceptions of fishermen and fishing. Given the anti-fishing agency

attitude necessary to allow this disgraceful situation to evolve, should we assume that this was also unintentional and spontaneous?

And what about “research” such as that carried out by Professors Jon Sutinen and Dennis King and funded by Pew/Lenfest? The inescapable conclusion of their article, ***Rational noncompliance and the liquidation of Northeast groundfish resources*** is that the supposed sorry state in the New England groundfish fishery was in large part due to fishermen and those running fishing businesses breaking the law. I did a critique of Sutinen’s and King’s efforts in a column for the Saving Seafood website (<http://www.fishnet-usa.com/All%20Stolpe%20Columns.htm#Law%20enforcement>), but in it I hadn’t mentioned that their “special thanks” went to “the staff of the NOAA Office of Law Enforcement and NOAA National Marine Fisheries Service regional offices who provided researchers with enforcement data.” That’s not data that I or anyone else should be willing to hang a mortarboard on, but is this research going to be redone in view of the shambles that NOAA law enforcement in New England was in at the time? Is anyone at Pew or Lenfest going to correct the public record?

And how much in unnecessary and/or duplicative regulatory overkill did this institutionalized (in NOAA/NMFS and a handful of universities, ENGOs and the foundations that enabled them) “you can’t trust fishermen” myth cost those fishermen, the businesses they supported, the consumers they supplied and the U.S. taxpayers? The people who and the organizations that manufactured and perpetuated the myth all profited handsomely, and those profits came out of the holds of U.S. fishing boats and the pockets of U.S. seafood consumers.

“Fishermen and fish dealers believe that they are treated like criminals. It is an “us against them” mentality. The regulations are complex, complicated, constantly changing, and in some cases, contradictory. Fishermen are paranoid every time they come ashore to offload their catch that they will be met at the dock by a Special Agent who will look for and find a violation of some obscure or even well known regulation. They feel that the offloading of their catch is fraught with peril. Fish dealers who daily offload volumes of fish are always apprehensive that they would be charged with a violation committed by a fisherman, over whom they have little or no control or that the daily requirement of reporting substantial volumes of fish may inadvertently be in error. All of these occurrences can result in a violation, which in turn, can result in a substantial monetary penalty or permit sanction. Either may be enough to put a fisherman or fish dealer out of business. There are cases reviewed in this Report that support this conclusion. This is the plight of the regulated.”

“I have noticed in practically every case a pattern of assessing high monetary penalties in order to force a settlement of approximately half of the assessed penalty. The fisherman or fish dealer has no option but to settle because as previously pointed out in this Report and discussed later, they have no confidence that they could get a fair de novo hearing before an ALJ. The choice is simple. Settle with the Enforcement attorney for a coerced amount or run the substantial risk that the ALJ will uphold the original assessment which could force the fisherman out of business. This scenario becomes even more egregious because of the constant use of permit sanctions as a substantial bargaining chip and advantage to the Enforcement Attorneys in negotiating a settlement.” Hon. Charles B. Swartwood, III ret., ***Report and recommendation of the Special Master concerning NOAA enforcement action of certain designated cases***. April, 2011 – available at <http://www.noaa.gov/lawenforcementupdates/specialmasterreport.pdf>.

There were people in charge at NOAA/NMFS who had to know that the judges who were presiding over their in-house courts were in the position of benefiting from the penalties they assessed. They had to know that their in-house enforcement agents – and judges - were acquiring luxurious yachts, personal automobiles and exotic foreign travel much more easily and with far less oversight than should be acceptable for federal employees, that they were overseeing a force that consisted almost entirely of highly paid criminal agents who were involved almost entirely in civil violations, that data being supplied to researchers with the intention of indicting fishermen was, in the most charitable way I can phrase it, suspect. Or if they didn’t know, they were more grossly incompetent than anyone who is getting paid with public dollars has any right to be. But it was all ok at NOAA/NMFS because they were catching those bad guys who thought fish were there to be caught. In fact, if they were good enough at catching

those fishermen, the NOAA enforcement people were given bonuses – sort of like bounty hunters, only with federally issued “get out of jail free” cards.

If Ms. Lubchenco and Secretary Locke are really interested in changing things at NOAA/NMFS, or if Congress is really interested in seeing that things are changed, the job has to begin with changing this increasingly pervasive agency attitude. Could you imagine the condition our agriculture industry would be in if the Department of Agriculture looked at farmers the same way the NOAA/NMFS leadership so obviously looks at fishermen? Along with importing 80% of our seafood we’d be importing 80% of everything else that we eat as well. If the Secretary of Agriculture announced that his goal was to get rid of farms and farmers do you think it would be more than a week or so before we had a new Secretary?

Ask a farmer if the federal government is on his or her side and I’ll bet dollars to donuts that you’ll get an unqualified yes as an answer. What are the odds of getting the same answer from a fisherman?

But we’ve got someone in charge of NOAA, the parent agency of the National Marine Fisheries Service, who has publicly acknowledged that fishermen are on her hit list. And we’ve got someone in charge of the Department of Commerce, her boss, who is willing to apologize to a handful of fishermen when a bunch of his fish cops get caught with their hands in the cookie jar up to their waists, but has yet to say anything on the record about Ms. Lubchenco’s “get rid of fishermen” fixation. And need I write yet again that we’ve reached the point of no overfishing and rebounding stocks with all of those boats and all of those fishermen that she’s committed to getting rid of?

So how much do you think the in-house attitude towards fishermen has changed at NOAA/NMFS? Using a Titanic analogy, something that I try to do at least once a year and that’s become increasingly easy of late, we’ve heard the captain and first mate telling us that they are shifting crew from job to job, messing with the paperwork that keeps everything running about the way it has been, and giving new fake books to the orchestra, but their ship is still unsinkable. They would be telling us this on April 16, 1912.*

“It had the tone of a renegade law enforcement agency that felt it was above the law.... That’s a complete breakdown in checks and balances that we have in our responsibility as government officials in protecting the public but also in protecting the accused.... They used their enforcement power as an adhesion type of relationship where they would lay out what they thought the penalty would be and if you don’t comply with what we’ve indicated, it’s going to be a lot tougher on you. They completely took due process out of law enforcement.... It was completely Un-American.” (New Bedford mayor Scott Lang in the same interview with Gloucester Daily Times reporter Richard Gaines referenced above).

*The Titanic sank on April 15