

Commerce Secretary Gary Locke orders fishery enforcement penalties returned to 11 fishermen and businesses; accepts all of the Special Master's recommendations in his authority; announces additional reforms to NOAA enforcement program

[\(press release\)](#)

Press Call Transcript

Moderator: Shannon Gilson

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Coordinator: Good afternoon and thank you all for standing by. I'd just like to inform all parties your lines have been placed on a listen-only mode until the question and answer segment of today's call. If you'd like to ask a question, that'll be Star 1 on your touchtone phone. I would now like to turn the call over to Shannon Gilson. Ma'am, you may begin.

Shannon Gilson: Thank you. Good afternoon, everyone. I'm Shannon Gilson with the Department of Commerce's Public Affairs Department. Thank you for joining us today.

Before we begin, I want to take care of a few pieces of business. I want to remind folks this call is on the record. You should be getting a press release momentarily if you haven't already. In addition, we're going to post the release, Secretary Locke's decision memo and the Special Master's report on both commerce.gov and noaa.gov.

Secretary Locke and Dr. Lubchenco will make remarks, and then we're going to open this call to your questions as time allows. In order to accommodate as many reporters as possible, we request that you limit yourself to one question, and if time permits, we'll circle back around.

In addition to Secretary Locke and Dr. Lubchenco, we are joined by Geovette Washington, the Department of Commerce Deputy General Counsel; as well as Eric Schwaab, the Assistant Administrator for Fisheries. So without further ado, I'm going to turn this call over to Secretary Locke.

Gary Locke: Thanks, Shannon. And thank you all for joining us. We're here today to discuss actions that the Commerce Department is taking to deal with long-standing concerns about NOAA's enforcement program in the Northeast.

As you know, fishermen have raised concerns that they were subjected to excessive fines and unfair enforcement by NOAA officials. We were made aware of the fishermen's concerns by industry and elected officials early in our tenure at the Commerce Department, and certainly Dr. Lubchenco almost immediately asked for the Inspector General to investigate some of these complaints.

But we acted immediately, and then we asked the Inspector General to investigate additional complaints. And in response to the Inspector General's findings in September of 2010, I appointed an independent Special Master, Judge Charles Swartwood, III, to review enforcement actions that the Inspector General identified as being problematic.

Now we took this urgent action for two reasons. First of all, we value America's commercial and saltwater recreational fisheries. And together they

generate more than \$160 billion in sales nationwide and support almost 2 million jobs.

And, of course, the fish that they harvest feeds America and people all around the world. It's absolutely essential for the Commerce Department and NOAA to ensure the conditions are in place for our fishing communities to thrive.

And that leads me to my second point, which is that in some areas, particularly New England, not enough was being done to create and maintain those conditions. The primary goal of our enforcement program is compliance that protects the economic interests of fishermen, and makes fisheries sustainable by preventing illegal or over-fishing.

An effective enforcement program ultimately protects the business or economic interests of fishermen. And we expect NOAA enforcement personnel to enforce laws fairly and to act prudently to serve those whose livelihoods depend on the marine resources those laws protect. Enforcement must be fair, consistent and uniform.

The Special Master completed his review of 30 cases. And out of those 30, he identified 13 complaints affected by conduct that fell short of the standards that I set for his review; conduct that overstepped the bounds of propriety and fairness.

He recommended reversing or reducing penalties or sanctions imposed in connection with 11 of these complaints. Two others focused on simply additional training.

Judge Swartwood also recommended that I take no action on the remaining 17 complaints, because in those cases his investigation exonerated the NOAA

employees whose conduct was called into question in the Inspector General's report; or he concluded that the ultimate fine was not excessive, given the totality of the circumstances.

I am taking action on all of Judge Swartwood's recommendations in every instance where I have the authority to do so. In some cases, I'm actually going farther than what he recommended.

As a former prosecutor and as a former part-time judge, I expect our law enforcement program to uphold high standards and maintain the public's trust. And if there's even the perception that this standard is not fully met, action must be taken. And it is being taken.

We inherited this decades-old problem, but this administration is the first to take action to fix it. We've conducted a top-to-bottom review of NOAA's enforcement program, and conducted sweeping reforms to ensure the program is fair and effective.

NOAA leadership and I have acted decisively to change the culture that allowed these problems to come up in the first place. We've put in new leadership. We've added staff to improve transparency and communication.

We've made sweeping reforms, for instance, to the asset forfeiture fund where many of the prohibited practices of the past have been eliminated to make sure that there's no perception that enforcement officers benefit from the fines that they impose.

We've made sweeping reforms to enforcement policies such as central headquarters review, making sure that there are uniform guidelines on

penalties and settlements, with all settlements reviewed by NOAA headquarters for consistency.

For those fishermen who were wrongly fined or sanctioned, we will issue refunds to them within 30 days. In addition, today we've mailed letters to the 13 complainants to offer our sincere apology for the enforcement actions that the Special Master found to be unfair and unjust.

These are important steps forward, but we're not done. The sort of behavior described in Judge Swartwood's report ends on my watch. And that's why we're announcing additional changes to remove even the perception of bias, and ensure that our enforcement system is fair, uniform and effective.

We will work with all the regional fishery management councils to simplify fishery management regulations, and provide routine training for the fishing industry and other stakeholders on regulatory compliance.

And with respect to New England, as part of Phase II which is now underway of the New England Management Review, we're going to be working directly with the New England Fishery Management Council on a targeted effort to simplify, clarify and reduce redundancy in fishery management regulations.

And we're prepared to hire outside people to actually help in writing, putting into plain English the simplified, clarified new regulations; or actually regulations that are now on the books, but to make them less redundant, to simplify and clarify them. We're committed and willing to put additional dollars to make sure that this effort succeeds.

We're going to be working with the Office of Personnel Management to transition from the current administrative law judge system that we now have

with the Coast Guard, to another agency. Judge Swartwood made no findings of actual bias or conflict of interest with respect to any administrative law judge; however, we are taking this action because we need to reset our relationship with the fishing industry.

And we will be requiring all enforcement personnel and enforcement attorneys to attend annual professional and ethics training. We'll be expanding the Compliance Liaison Program to help fishermen at the waterfront better understand and comply with regulations.

We're going to be reinforcing strict guidelines to limit communications between administrative law judges and NOAA staff, to ensure there is no conflict of interest, real or perceived. And we're going to be ensuring a balanced workforce of enforcement officers and special agents to foster a fair and effective program.

In the midst of all of these issues, it's easy to forget that ultimately the Commerce Department, the Obama administration, and New England fishermen share a common goal of building thriving fisheries and coastal communities that can support good jobs now and in the future.

And we're going to continue working with the fishing industry in New England, the congressional delegation, and others to repair this relationship. Now I want to turn the call over to Dr. Lubchenco.

Jane Lubchenco: Okay. Thank you very much, Mr. Secretary, and thank you for your leadership on this important matter. Today marks a major turning point in NOAA's relationship with America's fishermen, and in particular, fishermen in New England.

Too often and for far too long, we found ourselves in opposition to one another, mistrustful of each other and not working together toward our shared goal of sustaining and growing fishing jobs in this country. Much of this tension comes from complaints about NOAA's enforcement program, complaints I heard directly from fishermen, from elected officials and from others, from my first day in office.

Secretary Locke and I made reforming NOAA's enforcement program a top priority. And together, as the Secretary has summarized, we have already made considerable progress. With the Secretary's decisions announced today, we acknowledge and rectify past mistakes, and rededicate ourselves to work together with the fishing industry toward a more prosperous future.

I want to apologize to the fishermen and businesses hurt by these mistakes. And as we do so, it is important to remember why today's actions matter. The Obama administration is committed to sustaining and growing fishing jobs.

Fishermen, commercial and recreational, are the lifeblood of so many of our coastal communities. Fishing is one of our nation's oldest and proudest professions and favorite pastimes.

The men and women who work on the sea do so out of a deep love for the ocean, to provide for their families and to bring healthy food to our tables. And America's fishermen, these small businessmen, support vital jobs in our coastal communities.

As part of our commitment to fishermen, I made fair and effective enforcement a top priority from day one. For it was on my first day that I met with fishermen from New England, and heard first-hand of their concerns.

Based on that meeting and on subsequent trips to New England, and discussions with the congressional delegation, I asked the Department of Commerce Inspector General to review our enforcement program. And as the Secretary stated, we made considerable progress over the last two years.

We put in place new enforcement leadership at headquarters and in the New England regional office. We transferred authority to issue charges and settle cases from the field staff to supervisors in headquarters. We instituted a more transparent penalty policy to give greater clarity for the regulated community.

We revised regulations to place the burden on NOAA to justify its proposed penalty and permit sanctions in administrative hearings. We instituted an asset forfeiture fund use policy that greatly restricts the use of the fund, in order to ensure there is no conflict of interest, real or perceived, with the use of the fund.

And we made the emphasis of our enforcement program compliance over punishment, including the hiring of a former fisherman as a compliance liaison in New England.

As any fisherman will tell you, when it comes to enforcement, he or she wants to know that there is a level playing field. They want regulations that are easy to understand and fairly enforced. And they want to know that if others break the rules, they will be caught.

There are many examples, many examples across the nation where NOAA enforcement works. But the Special Master's report points out areas where we must improve.

In addition to the Secretary's decision to return penalties to certain fishermen and businesses, and change our current administrative law judge system, I'm instituting additional reforms at NOAA in response to the Special Master report, and the Secretary described these in his remarks.

As I mentioned at the beginning of our remarks, too often and for far too long, NOAA and fishermen have been in opposition with each other. The reasons for this are many and they go back years, if not decades. And I know that restoring trust between NOAA and fishermen will not happen overnight. But we must succeed. We have to remain committed and have to work together.

In summary, with today's actions we have apologized to those wronged and remitted funds where appropriate. These actions build upon our comprehensive overhaul of NOAA's law enforcement, significant changes in people, policies, management and oversight all designed to ensure transparent, fair, uniform and effective law enforcement.

We are changing the culture, the standards and the expectations for our law enforcement. And it is my sincere belief, therefore, that today marks a true turning point in our relationship with America's fishermen. Thank you.

Shannon Gilson: With that, we'll open this call to questions.

Coordinator: Thank you. At this time if you would like to ask a question, press Star 1 on your touchtone phone. You are asked to limit your questions to one, with no follow-up. If you have a second question, please queue up again; and provided that we have time, you may have the opportunity to ask another question.

Once again, if you would like to ask a question, press Star 1 on your touchtone phone. One moment, please. Our first question will come from Richard Gaines. Your line is open.

Richard Gaines: Yes, Mr. Secretary.

Gary Locke: Yes.

Richard Gaines: Has anyone who had been in a position of authority in law enforcement been sanctioned in any way for the miscarriages that you have acknowledged here today? And second of all, if I could add a second part to this question, can you explain how you determine the amount of money that would be returned to fishermen?

Gary Locke: Well the amount of money that we're returning to the fishermen was based on the recommendations by Judge Swartwood. So he made his recommendations and I followed them in each and every case where I had the legal authority to do so.

There were three gentlemen who had lost days at sea, and Judge Swartwood had recommended a monetary payment to them as a method of redressing that lost days at sea. But that is actually contrary and exceeds my statutory authority, and we discussed that with Judge Swartwood. He understood that.

And so in three cases we were not able to do that. And I think they ranged anywhere from like a few hundred dollars to about \$1000.00. But that'll be in the report. But in other cases, we followed the dollar amounts suggested by Judge Swartwood. In two cases, we actually went beyond and provided greater relief than even recommended by Judge Swartwood.

With respect to the personnel issues, as Dr. Lubchenco has indicated, there have been significant changes already in the personnel and the supervisory folks up in New England, and even down in NOAA headquarters. And there will be some additional changes in personnel.

Shannon Gilson: We'll take the next question.

Coordinator: Thank you. The next question will come from Jay Lindsay. Your line is open.

Jay Lindsay: Secretary Locke, I'm curious. You mentioned a culture being at issue here in terms of maybe the root of why these things happened. But, you know, on total there's not a, you know, if we're talking about 11 cases or 13, there's not a lot. You know, even out of the 30, it's not a majority.

Are these individual people acting badly? Or is this a culture that created this problem? Or what it is, you think, at the root of this?

Gary Locke: Well I think that there was a culture of very aggressive enforcement, and a lot of our people were following in part or carrying out that culture. But there was not consistency, uniformity in how people were treated. And that's what I think Judge Swartwood noted in his report, which again, we are making public.

But he also found that - exonerated the actions of many or several of the individuals in many of these cases. At times, the initial proposed fines were very excessive and unfair, but ultimately resolved and settled for an amount that he did think was fair.

But we've got to really make sure that we don't have this perception that initial fines are deemed to be excessive, and where people feel that they're being coerced into settlement, even if it's for something at a reasonable amount.

And that's why Dr. Lubchenco early on changed the charging practices and the settlement practices, so that we now have basically guidelines that determine what the appropriate initial penalty will be. And then any settlements have to be reviewed by headquarters to ensure that there's consistency and fairness, not just among New England, but also with respect to the rest of the region.

When I was a deputy prosecutor, we actually had guidelines on charging, so that cases would be treated similarly regardless of the deputy involved. And then all plea bargaining and all settlements were actually conducted by one person to ensure uniformity and consistency. That is now the approach that we're doing here at NOAA.

Jane Lubchenco: And, Mr. Secretary, if I might add just briefly to that, I think the Special Master's findings really focused on a lack of supervision and standards in the work of our law enforcement. And because those problems reflect a lack of management and oversight, our efforts to respond to this problem have been focused on fixing the process. And that, I think, will serve us in good stead.

Shannon Gilson: Jay and others, just to point out that on the release, there is a link to the timeline of actions that NOAA has taken over these several months to remedy these problems. That may be helpful for you to reference. Operator, we can take another question.

Coordinator: Thank you. The next question will come from Steve Urbon. Your line is open.

Steve Urbon: Hi. Secretary, thank you very much for doing this. It's been a long time coming, and we appreciate it very much. My question goes back to Richard Gaines' initial question.

A lot of people are wondering with a strict liability standard in place for the fishermen themselves, there hasn't seemingly been much discipline of the NOAA personnel involved in these cases. We've seen some transfers. We've seen no dismissals. How could that be? What is happening here?

Gary Locke: Well we've been guided by the advice of our attorneys in terms of human resources department, personnel department and our general counsel's office. I can only say that we took these allegations and these complaints very seriously, and we've made a lot of changes, and there have been some retirements and reassignments.

Shannon Gilson: Operator? Another question please.

Coordinator: Yes. The next question will come from Beth Daley. Your line is open.

Beth Daley: Hi, thanks. Secretary or, you know, Administrator, I mean I'm curious how much you think - I'm curious about the layers of rules and regulations to the New England fisherman is, you know, mind-boggling. Someone looking in from the outside is - it looks like a mess.

And I'm curious about how easy, do you think it is that fishermen sometimes break the rules without completely meaning to, because the rules are so complex. And if you have any examples, it would be useful; and any ways to rectify that, if you know specifically what you'll do.

Gary Locke: Well actually that was cited by Judge Swartwood, and some of the cases involved people not knowing that they were violating the rules. And so some of these - there were one or two cases in which things were unintentional, and yet enforcement came down hard on them.

Judge Swartwood, in his summary, also indicated that he felt that the rules are very hard to understand, confusing and complex, not only for the fishermen, but even for our enforcement people.

And that's why as part of Phase II of the New England Management Review, NMFS is going to be working directly with the New England Fishery Management Council on a targeted effort to simplify, clarify and reduce redundancy in our fishery management regulations. And we are prepared to actually hire outside people to help in that simplification, rewriting, plain English exercise.

I did that as governor of the State of Washington. We were able to significantly reduce down from thousands of pages of various rules and regulations, and write things that used to take two or three pages, get it down to one page by using plain English so that these rules and regulations were crystal clear.

And I believe that the New England Fishery Management Council, some of the leadership has expressed an interest in this. So this is going to be a targeted project for the New England Management Review with the Fishery Council or the Management Council in New England. And we're prepared to use funds to hire outside people and entities to help in that rewriting process.

Jane Lubchenco: Beth, this is Jane Lubchenco. I think it should be obvious from what the Secretary said, but I want to make explicit that NOAA doesn't set those rules and regulations.

They are set by the Fishery Management Council, which is why the Secretary has emphasized that we will be working closely with the Council to streamline those rules, make them more understandable in English, simplify them and bring additional resources to bear should that be useful in accomplishing that goal.

Shannon Gilson: We have time for another question.

Coordinator: Thank you. The next question will come from Jennifer Smith. Your line is open.

Jennifer Smith: Yeah, hi. I'm just trying to get a sense of how big a problem this was in the region that I cover, which would be commercial fishermen or seafood processors out of New York. Can you give me a sense of what proportion of the total complaints came from New York, and if any local guys are affected, you know, are getting money back per the announcement today?

Gary Locke: Well I can't - as I read the report, and I've read it several times, it doesn't necessarily indicate exactly where everybody came from. But obviously the bulk of the cases involved New England fishing entities. There was a case, I believe, involving a New York entity. There were some from the, I think, North Carolina and even one case involving the West coast.

But I did not break it down by exact business location or where they actually lived. You know, some people might have boats in New England but might

actually operate or live in another state. Geovette, do you have that breakdown or anything like that?

Geovette Washington: I don't have the breakdown of all of the complaints, where they are, but I do know there is at least one individual from New York who will be receiving a refund.

Shannon Gilson: Jennifer, this is Shannon Gilson. We will work with you to get that information. And just to remind folks, we will be posting Judge Swartwood's report online soon. And we have time for one more question.

Coordinator: I'm showing no questions at this time.

Shannon Gilson: All right. Again, thank you, everyone, for joining the call. Go to Commerce.gov or NOAA.gov for the timeline, the release, the Secretary's decision memo, and the report. We'll be putting those elements up soon. If you have further questions, please don't hesitate to give Justin Kenney or myself a call, or shoot us an email. Our information's on the press release. All right, thank you everyone.

Gary Locke: Shannon, let me just say that I believe that the total of the refunds or remittances is \$649,527. And that exceeds Judge Swartwood's recommendation by, I believe, let me see, \$80,000.

Shannon Gilson: All right. Thank you, Mr. Secretary, Dr. Lubchenco, and thank you all for joining us today.

Gary Locke: Thank you.

Coordinator: Thank you. That concludes today's conference. You may disconnect at this time.

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