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Commerce chief clamps limits on past NOAA cases

By Richard Gaines
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The U.S. Secretary of Commerce has put written limits on the more open-ended approach he described last September to finding and undoing unjust prosecutions and penalties leveled against fishermen by the federal fisheries law enforcement system.

Secretary Gary Locke's changes to the parameters of a policy he created during a day of meetings with fishermen and their advocates in Boston and Portland, Maine, last fall include rejecting further requests from members of Congress and Gov. Deval Patrick.

Patrick and members of the congressional delegation denounced Locke's decision to put limits on the scope of the review of — search for — cases showing past injustice.

"A culture of 'no' has taken hold of the Department of Commerce," Rep. John Tierney said in a statement. "I will be taking this matter directly to the White House and feel certain a number of my colleagues will join the fight."

According to the Locke memo, the special master he appointed last fall to wrap up the loose ends trailing the most egregious cases — and possibly open new ones — into excessive charges and prosecutions was directed to avoid:

Cases for which no civil penalty was imposed;

Complaints heard before a federal district court judge;

Cases currently before an administrative law judge or the NOAA administrator;

Complaints not submitted to the office of the Inspector General.

Locke also turned down the congressional and gubernatorial request to allow fishermen 45 more days to come forward with new complaints, and to freeze pending sanctions against fishermen until the completion of the work by Special Master Charles Swartwood III, a retired U.S. District Court judge in Boston who also serves as chairman of the state Ethics Commission.

"Once again, the U.S. Department of Commerce has rejected a reasonable request from the Massachusetts fishing industry," Patrick said in a prepared statement. "Granting fishermen an extra 45 days to make their case before Special Magistrate Swartwood would have been a simple act of fairness, demonstrating good faith toward the industry."

"We were not asking to intervene in the adjudicatory process," said Congressman Barney Frank, whose district includes New Bedford. "We requested that where that legal process has demonstrated and proven to be deeply flawed, individuals who have been intimidated from complaining now be given a chance to submit their cases for a wholly impartial review by a special master of the Secretary's choosing."

"If Commerce refuses to own up to its failings," said U.S. Sen. Scott Brown, "an independent investigation will be necessary to right the many wrongs our fishermen have suffered."

"This is a step backwards," added Sen. John Kerry. "I'm troubled that not only are our fishermen being denied appropriate remedies, but they're being forced to pay fines before their cases are even reviewed."

The action seemed to thicken the wall of mistrust between the Obama administration's federal fisheries administrators and the New England delegation in Congress on both sides of the aisle.

Members and the governor have moved to join a federal lawsuit by industry interests and the hub fishing port cities of Gloucester and New Bedford challenging the constitutionality and legality of the new regulatory system for groundfish.

The request for a stay in penalties was made to Locke in writing last year from Sens. Kerry and Brown and from Reps. Tierney, Frank and then-Congressman William Delahunt, who has since retired.

In backtracking somewhat from his promise of an expansive review of old cases — including those not part of the year-long investigation of the Commerce Department inspector general — Locke emphasized the need for closure to the chapter of abuse against fishermen which was documented in a series of investigative reports beginning a year ago by IG Todd Zinser.

Dated Tuesday, Locke's five page "Secretarial Decision Memorandum" was not released to the public by the agency, according to Locke's spokeswoman Shannon Gilson, but was forwarded to the press by Tierney's office.

Tierney has assumed informal duties as lead critic of and watchdog over the federal fisheries law enforcement debacle, which, as documented by the IG's initial report last January, had its epicenter in Gloucester.

The memo was not expected to affect the review by Swartwood of the documented injustices against the Gloucester Seafood Display Auction.

In his reports and request for independent follow up to the findings, Zinser only identified by name one subject of law enforcement actions, and that was the auction.

Zinser's reports noted that federal law enforcement agents made a forced entry to the business at the center of sales from the Gulf of Maine and a US district judge chastised the one-time agent in charge for attempting to harm the businesses reputation with a false claim that it was being closed for a violation when the case remained on appeal.

At his meetings with the industry in Boston last September, Locke said at least half the remaining sum in the Asset Forfeiture Fund, build with fishermen's fines would be reserved for use in reparations. Locke's office did not say Friday whether that pledge remained in effect.

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