

Gloucester Daily Timers

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Editorial: NOAA's use of 'judges' a new low for flawed justice

Anyone who may have wondered how or why NOAA chief Administrator Jane Lubchenco could keep ousted fisheries policing chief Dale Jones on the payroll of her National Oceanic and Atmospheric Administration after an Inspector General found he had failed to oversee NOAA enforcement's Asset Forfeiture Fund, then shredded documents while the IG's investigation was in progress has no reason to wonder now.

The same goes for how Lubchenco could use and end run to use money through a public-private "partnership" to expand her embattled catch share fishery management program — even after both houses of Congress backed a spring budget amendment halting all funding for any new NOAA catch share ventures.

Indeed, by continuing to work with the U.S. Coast Guard's Administrative Law Judge judicial system in fishery cases, Lubchenco has confirmed for all to see that she has absolutely no sense of accountability, nothing but contempt for Congress, and no respect whatsoever for even her own superior, U.S. Commerce Secretary Gary Locke, who, two months ago, ordered Lubchenco and NOAA to cease all use of the tainted administrative judicial system.

Not only have Lubchenco and NOAA continued to work with the Coast Guard law system, but the same judges who handled perhaps the agency's two highest-profile New England cases — the bogus NOAA enforcement push to shut down the Gloucester Seafood Display Auction, and the one that cost New Bedford-based fisherman Larry Yacubian more than \$400,000 in fines — have now been assigned to handle cases in which those same parties are seeking to recover legal fees.

So it is now up to our federal lawmakers and Locke alike to stand up to Lubchenco's arrogance and lack of accountability and bring an end to her reign as head of a renegade agency that — embarrassingly, within the Department of Commerce — remains bent on a job-killing regulatory scheme that's enforced by a corrupt judicial system that's essentially been confirmed by Commerce investigators.

The latest chapter in Luchenco's out-and-out defiance of lawmakers' and even now Locke's order stems from the news, reported first by the online website SavingSeafood.com and then by Times, that Administrative Law Judge Parlen L. McKenna was reassigned on June 27 by Coast Guard Chief Judge Joseph N. Ingolia "to oversee efforts to recover legal fees and other expenses incurred by Capt. Yacubian during his lengthy defense against NOAA's charges of overfishing in closed waters."

And that assignment comes after a report by Commerce investigative master and retired Judge Charles B. Swartwood III found that McKenna and the enforcement lawyers in the case were scheduled to travel together to a conference in Kuala Lumpur, Malaysia, at the time the judge issued his ruling.

Swartwood found that McKenna's ruling ignored a federal judge's decision to vacate the penalties imposed; in the face of the federal judge's decision, McKenna reinstated the original penalties.

Meanwhile, as SavingSeafood reported, "Numerous Freedom of Information Act requests have yielded documents suggesting, but not quite confirming, that the (Kuala Lumpur) trip was paid for using the Asset Forfeiture Fund." That's the same fund that was bolstered by the \$430,000 fine levied against Yacubian.

There's more, of course. While also rightfully seeking to recoup legal costs, the Gloucester Seafood Display Auction will also once again be facing Administrative Law Judge Walter J. Brudzinski.

That's the same judge who, while adjudicating the auction case previously, refused to allow the release of documents ordered delivered to the auction lawyers as part of discovery. And, according to Swartwood's finding, the auction was the subject of "selective enforcement by NOAA, (with) little, if any credible evidence..." showing that the auction was "engaged in any pattern of intentional, illegal behavior."

Lubchenco, of course, doesn't care about any of that. She ignores it — and, sadly, has been allowed to ignore it.

That, in fact, is what has to stop — and our lawmakers must push to make it stop — now.