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NOAA keeps tight lid on policing documents

By Richard Gaines
Staff Writer

The National Oceanic and Atmospheric Administration Thursday dropped a largely opaque curtain over its scandalized ocean police force, found by a U.S. Inspector General to have wielded its authority excessively and treated administrative failings by fishermen as crimes.

The overall effect, the Commerce Department IG wrote, was to exacerbate the "dysfunctional" relationship between the government and governed.

In response to a Freedom of Information Act request from the Times, NOAA refused to explicitly clarify the status of Dale J. Jones, the longtime oceans police chief who became the galvanizing figure in the scandal as it broke in phases in January, then again in March before two House oversight subcommittees.

The agency said it had received a completed report on document shredding by Jones from the Commerce Department inspector general but was withholding it because of its possible relevance in an "enforcement" action.

The agency also deflected a series of questions filed in the Times' Freedom of Information Act request, which sought a copy of the IG's findings, Jones' status — including whether he is still on a government payroll — the status of Jones' top assistant and "any other personnel moves" within the Office of Law Enforcement.

Drawn from IG's report

NOAA had refused to answer questions from many press sources that arose from the Inspector General's preliminary report in January on a six-month national investigation into allegations of rogue police behavior motivated by vengeance against fishermen and their businesses.

The complaints echoed out across the country after beginning in Gloucester, where the Gloucester Seafood Display Auction, the No. 1 platform for the sale of fish from the Gulf of Maine, had resisted NOAA prosecutions for more than a decade.

It took letters from the state legislative leaders and then the state's congressional delegation to convince Jane Lubchenco, President Obama's choice to head NOAA, to ask the IG to investigate.

A spate of new questions surfaced in March after Inspector General Todd Zinser testified on consecutive days before subcommittees in Gloucester and in Washington, and cited evidence that Jones misused an \$8.4 million asset forfeiture fund and ordered the mass shredding of government files in his possession during the final phase of the investigation last fall.

'Contempt' warnings

The Gloucester hearing, held in City Hall's Kyrouz Auditorium, was apparently the last public sighting of Jones, who sat that day with fellow witnesses Lubchenco and Zinser to hear Congressmen John Tierney and Dennis Kucinich, D-Ohio, warn Jones he could face obstruction and contempt charges.

But Lubchenco deflected urgings by New England and Mid-Atlantic senators and representatives of both parties to suspend or sack Jones, pending Zinser's delivery of his report on the document shredding.

In its Freedom of Information Act response, NOAA said it had received the shredding report but would not release it based on advice by the IG, and cited a disclosure exemption for documents "compiled for law enforcement purposes, the disclosure of which could reasonably be expected to interfere with enforcement proceedings."

A cryptic statement in April by Eric Schwaab, Lubchenco's choice to head the National Marine Fisheries Service, did not mention Jones by name but announced that the head of sustainable fisheries had taken over temporarily as acting chief of the oceans' police force. The force includes more than 200 agents in eight regions employing the resources of the Coast Guard and state environmental police to enforce the Gordian complexities of the Magnuson, Endangered Species and Marine Mammals Acts as well as other conservation laws.

Privacy Act

Schwaab cited the Privacy Act and "advice from departmental counsel" to explain the lack of clarity regarding the fallout from a scandal that had been building around Jones since last summer. His FOIA response to the Times said the search of his office "revealed no responsive documents."

Schwaab declined to comment for this story as did NOAA chief counsel Lois Schiffer, who was an assistant attorney general under Attorney General Janet Reno in the Clinton administration.

They co-authored a memo released by Lubchenco in the aftermath of the IG's written report in January that asserted the intention to reform the department without "looking back" at how Jones and his top staff — all graduates of Maryland police forces — presided over a largely unsupervised force.

Its excessive use of authority "contributed significantly to a highly charged regulatory climate and dysfunctional relationship between NOAA and the fishing industry," Zinser's report stated.

In the same paragraph, Zinser obliquely dealt some blame for the law enforcement to Lubchenco for failing to appoint new leaders to the positions responsible for police and legal actions.

The IG noted that Lubchenco, nearly a year into her stewardship of the oceans, had, as of then, not yet appointed a NMFS administrator, the executive authority over the police, and had only recently appointed Schiffer chief counsel.

A former officer of the Environmental Defense Fund, Lubchenco channeled her energies to promoting and implementing catch share fishery management programs, a system championed by the Environmental Defense Fund.

Lubchenco had been an EDF board vice chairwoman. As a celebrated scientist, she cited research papers that held ocean ecosystem collapse was imminent, even though those claims were — and are — widely disputed by others, including lead scientists at NOAA.

Over the year that the NMFS post was left unfilled — held temporarily by a career bureaucrat — Lubchenco declined to appoint an esteemed academic scientist from Massachusetts sponsored by Congressman Frank, much of the fishing industry and other federal lawmakers but opposed by EDF.

Soon after the IG's report, Lubchenco plucked Schwaab, a virtual unknown to the fishing industry, from the No. 2 natural resources post in Maryland.

Schwaab has told the Times his appointment was not tied to EDF support. But in the 1998 EDF annual report, Schwaab, then the director of forestry and wildlife service for Maryland, was featured heaping praise on EDF.

"From my perspective," EDF quoted Schwaab as saying, "Environmental Defense Fund has been terrific."

Six-part request

NOAA received a six-part FOIA request from the Times on April 13 — after Lubchenco deflected requests, and then later demands for transparency and disclosure sought by Tierney, Sen. John Kerry, and federal lawmakers of both parties representing ports along the entire Atlantic and Gulf coasts.

NOAA responded Thursday, two days after its own deadline, which was created by the agency's claiming a 10-day extension.

The response provided a redacted resume and salary history for Jones, who started at \$90,793 in 2001 after he was hired out of the chief's chair of the suburban Hagerstown, Md., force, and was earning \$158,285 after his last raise on Jan. 3, 2010.

But the query about his current status was rejected to avoid "unwarranted invasion of personal privacy," which was also cited in the refusal to clarify whether members of Jones' leadership team had been "removed or sanctioned."

Finally, Schwaab declined to provide an update with settlement details about more than a dozen prosecutions that were presented to the New England management council by Andrew Cohen, the agent in charge of the Northeast region.

One of the prosecutions cited by Cohen had already been tried and a judge had stripped the proposed penalties — \$270,000 in fines and lengthy loss of fishing privileges for the two boats — to bare bones after concluding that the accused Axellson family of Cape May, N.J., were guilty of nothing but a technical reporting violation.

The IG's report had noted that fines and penalties heaped on fishermen in the Northeast had been assessed by NOAA at up to 500 percent more than those levied in other parts of the country.

Richard Gaines can be reached at 978-283-7000, x3464, or rgaines@gloucestertimes.com