

# *Gloucester Daily Times*

September 28, 2010

## [NOAA union fighting reform of law enforcement](#)

By Richard Gaines Staff Writer

The announced plan of U.S. Commerce Secretary Gary Locke to make whole the members of the New England fishing community harmed at the hands of federal fisheries law enforcers has run up against the labor union at the National Oceanic and Atmospheric Administration.

The National Weather Service Employees Organization, which represents 4,800 NOAA employees including the trio of enforcement and litigation lawyers in the Northeast region headquartered in Gloucester, warned Tuesday that key parts of the law enforcement reform package outlined by Locke in recent days would require collective bargaining.

In so claiming, the union put a harsh analysis on the announcement made Monday by Locke in Boston that he was going to use half the existing fund of fines taken from the industry for reinvestment guided by industry recommendations.

### **The union described the Locke plan as a "last-minute, pre-election slush fund."**

"Secretary Locke took aggressive action based on a range of troubling issues cited in the Inspector General's reports ranging from inappropriate conduct to misuse of taxpayer dollars," said Shannon Gilson, deputy director public affairs for the Commerce Department. "He and Dr. Lubchenco are committed to reforming NOAA's enforcement program to prevent abuse, increase transparency and maintain the public's trust."

Jane Lubchenco is NOAA administrator and architect of the Obama administration fisheries policy which has alienated most of the fishing community and its political advocates in both parties and houses of Congress.

She was not present at recent high-level meetings where Locke and federal lawmakers worked on smoothing relations.

Only isolated cadres of fishermen supported by and allied with Environmental Defense Fund, where Lubchenco had been an officer before her NOAA appointment, applauded the effort convert the fisheries into investor-friendly commodities markets known as "catch shares."

The consolidation destroys jobs, and Lubchenco had announced as her goal to see a "sizeable fraction" of the fleet eliminated. The effort via catch shares made the policy and its architect most unpopular along the nation's fishing ports.

The union NWSEO, which prides itself as being the first labor union to endorse the Obama-Biden ticket in 2008, said it was "keenly aware of the serious political trouble Democratic officeholders are facing in their re-election efforts in Massachusetts. This desperation does not give the agency an excuse to engage in serious and blatant violations of federal labor law," read the letter to NOAA Chief Counsel Lois Schiffer.

The objection and demand for collective bargaining traces to the previous policy practice of using money from the Asset Forfeiture Fund for "labor, benefits or awards."

The union said it became aware of the decision to shift the use from union to fisherman in press reports Tuesday.

**"We demand** that the restrictions placed on the use of the Asset Forfeiture Fund be lifted ... until ... we have the opportunity to bargain over the impact of the loss of this funding on salaries, awards and training of the attorneys we represent," wrote Marguerite Matera, the union's regional chairwoman.

Misuse of the Asset Forfeiture Fund became a case study in the multiple reports — in January, March, July and earlier this month — on prosecutorial misconduct by the federal Commerce Department's inspector general.

IG Todd Zinser's teams found that NOAA agents and lawyers had used the fund for purchases and travel as if it were a bottomless group debit account.

Many credit cards assigned to the more than 200 agents and law enforcement attorneys at NOAA have been called back since the IG reported that controls and auditing were nearly nonexistent.

Based on forensics work by the auditing firm KPMG, according to the IG's July 1 report that focused on the fund, the agency took in nearly \$100 million and expended nearly \$50 million in a 4 1/2-year period ending in June 2009 in more than 82,000 transactions.

These included auto purchases that assembled a fleet for NOAA's Office of Law Enforcement with more vehicles — 202 — than the 172 agents at NOAA.

KPMG described the Asset Forfeiture Fund as more of an "abstract concept" than a "tangible entity."

More troubling to the IG and the fishing community was the revelation that the Office of General Counsel for Enforcement and Litigation — the case-making and trial attorneys — used the fund of fines to pay for nearly all nonsalaried expenses.

Many defense lawyers saw conflict of interest in the motivation for setting high fines in fishing cases.

The IG found that, especially in New England where the protest against law enforcement began, government cases involved extra high fines to leverage settlements rather than trials. Defense lawyers considered the system legal extortion.

Locke came to Boston and Portland, Maine, on Monday to announce that the excessive enforcement era was ending and reforms would be put in place to warrant respect.

Last Thursday, after a meeting called by Congressman Barney Frank with Locke and New England federal lawmakers, the secretary of commerce announced new controls over Asset Forfeiture Fund spending by the agency.

Among the prohibited uses announced by Locke were "training unrelated to an integral part of an employee's job."

Locke also announced that he was naming a special master to review and revisit past cases to correct egregious miscarriages of justice.

**The union objected to that initiative too, arguing that according to Locke, "unit employees will be required to cooperate with the special master in reviewing complaints as well as the spurious allegations made against them by the inspector general."**

The letter from Matera, who is an attorney in the Gloucester NOAA office but not part of the enforcement and litigating unit, **demanding that the master's assignment be stayed "until we bargain over the impact and implementation. ..."**

On its web site, NWSEA also posted a defense of its members, the enforcement and litigation lawyers at NOAA.

Charles Juliand, a senior attorney in the Gloucester office, was featured in the IG's last report which was a series of case studies — cases that could be reopened.

The union asserted that its members "have been following agency policy rather than acting as rogue agents." The union also argued that Congress had authorized the "excessive penalties" that the industry, members of Congress and the IG found offensive.

Citing a 2009 study, "Rational Noncompliance and the Liquidation of Northeast Groundfish Resources," the union also argued that penalties assessed to fishermen in the Northeast might be "too low" rather than too high.

**The study was underwritten at the Environmental Law Institute and financed by the Lenfest Foundation, which was established at the Pew Charitable Trusts, the**

**mega philanthropic investor whose environment group is regarded as a leader in the anti-fishing lobby.**

The study was published on the same day in June 2009 that Lubchenco called in the Inspector General after she received an impatient letter from the congressional delegation.

Richard Gaines may be contacted at 978-283-7000 x3464 or [rgaines@gloucestertimes.com](mailto:rgaines@gloucestertimes.com).

---