

NOAA changed rules on using cash from fines

By Richard Gaines
Staff Writer

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Top law enforcers at the National Oceanic and Atmospheric Administration put a special focus for years on building up the agency's Asset Forfeiture Fund — a fund that recently held \$8.4 million — even after officers had been drawing from it for "travel and purchases" without needing approval of higher-ups.

But last October, while investigators from the U.S. Department of Commerce Inspector General were examining the fund and finding it with weak "internal controls" as part of a larger probe of NOAA's Office of Law Enforcement, unregulated charges to the fund were abruptly canceled.

And a high-level management official said any future requests for use of the fund — built from the violation "fines" paid by fishermen — would be screened and submitted to headquarters for approval "on a case-by-case basis."

The history of meticulous attention to the growth of the fund and the belated creation of controls over its use are spotlighted through internal memos obtained by the Times.

A memo from Oct. 5, 2006, from Paul Ortiz, senior enforcement attorney for the southwest region, reminded NOAA litigators that criminal fines would revert to the U.S. General Treasury unless specific language is inserted into the plea agreement.

"When working with an assistant U.S. attorney," Ortiz wrote to lawyers from the region, "ask them to use the following language in the plea agreement, and get the additional language into the judgment.

The memo went on to show how the required language would read: "fine of \$75,000 which by statute shall be deposited into the Magnuson Act Account, Account No. B17E02."

A second memo, with the names of the author and its recipients redacted, announced a new policy for "expenses and travel paid through Asset Forfeiture."

"Effectively immediately," the senior law enforcement official wrote, "all travel and purchases normally paid through the fund are canceled pending further notification. Any fund-related travel/purchase will come to me for review ...

"Submission to headquarters for approval will be on a case by case basis. Call me if you have questions," the official wrote.

Inspector Todd Zinser's 26-page report on NOAA law enforcement programs and operations described an agency in which the law enforcers have been allowed to operate in virtual autonomy — especially in the Northeast, where the impetus for the investigation began.

The IG's report found that NOAA Office of Law Enforcement jobs slotted into criminal investigative positions, which afforded higher pay.

The culture encouraged the idea that enforcement of administrative law and regulatory policy hinged to the Magnuson Act was crimebusting, which demeaned the fishing industry and left its members feeling treated as if they were criminals.

The approach also led to excessive fines that were some 250 percent higher in the Northeast region — which covers Maine through the Carolinas and is governed by offices in Gloucester — the IG reported.

Zinser made it clear that the national investigation, launched in Massachusetts and especially around Gloucester last July, was not finished. He said he would return to NOAA to look into specific cases of alleged vindictive and improper conduct flagged during more than 200 interviews.

Zinser's report identifies the forfeiture fund as a priority target for the next phase of his investigation because the fund has "weak internal controls."

"... We could not readily determine how NOAA has utilized these funds because while the fund's balance is included in the department's overall financial statements, internal controls over the fund are not tested as part of the department's annual financial statement audit," Zinser's office wrote.

"As a result," the IG said, "we are commissioning a forensic review of the fund as a follow-up, and will issue our findings upon its completion."

The overall investigation of NOAA enforcement began last June at the request of NOAA administrator Jane Lubchenco, who had received angry letters from members of the Massachusetts congressional delegation urging the probe, along with the leadership of the Massachusetts legislature. Both delegations said they had reason to believe law enforcement was settling scores with fishermen and industry businesses.

The highest profile and biggest target was what legislators described as vindictive NOAA enforcement actions against the Gloucester Seafood Display Auction, the leading platform for the sale of seafood from the Gulf of Maine and the linchpin of the waterfront economy in the nation's oldest seaport.

The Ciulla family, which owns and operates the auction, have fought three different efforts by NOAA to close it down for different periods of time paired with heavy fines, and is preparing for trial on March 1 in an administrative law court on a 59 count administrative claim for allegedly brokering fish landed illegally.

While building the case against the auction, as the Times reported last week that agents forced their way into the business after hours and without permission. The office manager filed a Gloucester Police complaint of "possible trespass by federal agent" against NOAA law enforcement, but no charges were ever brought.

Meanwhile, senior NOAA law enforcement officials have reportedly been called to Washington for special meetings this week to consider the implications of the IG's continuing investigation.

Richard Gaines can be reached at 978-283-7800, x3464, or via e-mail at rgaines@gloucestertimes.com

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