

TESTIMONY OF LAWRENCE MARTIN YACUBIAN

BEFORE THE SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE

SUBCOMMITTEE ON FEDERAL FINANCIAL MANAGEMENT, GOVERNMENT INFORMATION, FEDERAL SERVICES, AND INTERNATIONAL SECURITY

THOMAS CARPER OF DELAWARE, CHAIRMAN

SCOTT BROWN OF MASSACHUSETTS, RANKING MEMBER

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I understand it is customary to begin testimony by saying thank you to the Committee for the opportunity to be here.

Of course, considering *why* I am here, if I could re-write history, none of this would ever have happened. To be honest, I'd rather be out scalloping today.

But these things *did* happen. And I *am* here.

Chairman Carper, I thank you for agreeing to hold this hearing.

Senator Brown, thank you for your unwavering focus on our state's fisheries. Your predecessor, the late Senator Ted Kennedy, was a true friend of the fisherman. Your actions since your election to the Senate have upheld that legacy with honor. Thank you.

I also thank Commerce Department Inspector General Todd Zinser, and his staff, for undertaking the investigation, which exposed this corruption.

I thank Commerce Secretary Gary Locke for his promise that these problems will end on his watch.

And I further credit NOAA Assistant Administrator Eric Schwaab for releasing the highly-critical reports on fisheries management in the northeast, conducted by Preston Pate, and on science, conducted by Dr. Michael Sissenwine and Dr. Brian Rothschild, who is here with us today. But more has to be done.

During the darkest days of this long nightmare, I never imagined that one day I'd have the chance to sit face-to-face with a Cabinet member, and tell him how his Department had wronged me. Thanks to Congressman Barney Frank, that happened.

I never thought the Secretary of Commerce and the Administrator of NOAA would return fines, and apologize to me. Thanks to Senator John Kerry, that happened.

I am forever indebted to the men and women of the U.S. Congress and Senate who put politics aside and worked as catalysts -- across state and party lines -- to exonerate the many in my industry who were also wronged by a misguided regulatory system.

I'm a proud American. Despite what I've been through, I still love this nation of ours. In 2004, on the very day when we sold the family farm in Massachusetts to pay the settlement, we boarded a plane to Virginia, where we saw our son Captain Lawrence G. Yacubian leave to serve in Afghanistan. He later served in Iraq, and was awarded a Bronze Star for Meritorious Service in Combat. It is still hard for me to accept that unsupervised federal employees, working in a rogue agency could be allowed to run amok in this nation that I love.

The first reason that I am here today is to question why National Marine Fisheries Service Attorneys and Judges have not been indicted. In fact, never mind indictments, none of them have even been fired. Apparently it's not possible to be fired from the civil service. Nearly every one of them is still working for the Federal Government, despite the findings of the Office of the Inspectors General Report and Special Master's Case Review that these federal employees operated with malicious ethics and biased prosecution.

When Special Master Swartwood reviewed my story, he discovered what I have known all along: that justice was impossible, and that the cards were stacked against me before my case began. The National Marine Fisheries Enforcement system within NOAA was rigged by its own financial self-interest; warped career ambitions, and misplaced motives.

There were none of the legal checks and balances that are granted by our nation's legal system. The system violated even the most basic conflict-of-interest standards. Judges and prosecutors were allowed to maintain eerily close in-house relationships, with little or no oversight during the prosecution of my case. It's difficult to feel you're having 'your day in court', when the prosecution and the judge hearing your case are literally allowed to go to lunch together while the court is in recess. It's difficult to feel you're getting justice when the judge has been appointed by the prosecuting agency -- and will eventually be paid by the fines and of your conviction.

With such clear conflicts of interests, this agency upheld its own motives -- not justice. As Judge Swartwood concluded in his report "...Money was NOAA's motivating objective."

The second reason that I am here today is to shed light on the abuse of the National Marine Fisheries Asset Forfeiture Fund. NOAA turned the Asset Forfeiture Fund into a cookie jar for Enforcement staff. The fines they seized from fisherman like me were lumped into one big account, from which staff bonuses, company cars, international staff travel, and luxury boats were financed, with little to no oversight; and no auditing. And, as I noted a moment ago, this fund was used to pay the salaries of the Administrative Law Judges that heard our cases in their courtrooms.

One of the nation's top accounting firms, KPMG, at the request of the Inspector General, conducted the first audit of the Asset Forfeiture Fund last year, and they could only account for a little more than half of it. Forty-seven million dollars remain unaccounted for.

This isn't just lax accounting; it's a violation of the public trust. Was my \$430,000 in fines used to protect fisheries? Did it go toward the purchase of 200 government vehicles for a staff of 172? Did it go toward a boat described as "luxurious" by its manufacturer that NOAA somehow thought was necessary for their work? Or was it, perhaps, used to finance all-expense paid trips – literally around the world -- for the same NOAA employees who penalized my family to the brink of bankruptcy? I don't know the answers to any of these questions, and neither does NOAA.

The Asset Forfeiture Fund was not designed to be used in the way NOAA used it. The Magnuson-Stevens Act clearly states that forfeited funds be used for "expenses directly related to investigations and civil or criminal enforcement proceedings". It doesn't say anything about buying cars, or about flying folks across the globe for fancy conferences on my family's dime. But that's what happened

In addition to my \$430,000 fine, I had to pay in excess of \$250,000 in legal fees in order to defend myself. When the lawyers on the other side work for the only organization that can print money, legal bills add up quickly. But the damage goes beyond that; not only did my career disappear with that money, but my family's heritage and my childrens' inheritance did as well. My wife's family farm in Massachusetts, that was in her family for 350 years, is gone. We had to sell it. Our hope of passing along that property and its story, which spans almost all of American history, is no more.

The \$649,000 in fines returned by Secretary Locke to several other fisherman like myself is a good start to restoring trust in the system, but by itself it's not sufficient.

For those of us who were wronged, we've lost careers, years, and our legal fees and other costs we incurred at the hands of corrupt Federal employees are still unreimbursed.

For those of us who are still in the fishing business, there is still much more to be done before our faith and trust in our government is restored.

First, more needs to be done to restore the confidence of fishermen in the regulatory system. Today, I ask the Senate to conclusively determine what NOAA did with the unaccounted half of the Asset Forfeiture Fund; and the \$430,000 in wrongly-assessed fines that I was forced to pay.

Second, an independent investigation of NOAA Fisheries rule making is critical. What Preston Pate and his colleagues achieved in the Agency's internal report is commendable. But I suggest that an independent outside investigation conducted by Inspector General Zinser or the Government Accountability Office is warranted.

Third, better oversight into the funding of science programs is crucial. Independent institutions that both scientists and fishermen trust must be funded. The institution Dr. Brian Rothschild helped to found, the University of Massachusetts School for Marine Science and Technology is an example. Fishermen do not trust NOAA's internal grant-making to fund outside science. In the past, what they've done is feather their own nests, rather than direct money to the most

worthy institutions. And this has happened even when the funds come not from their appropriations, but from industry-funded set-asides which were created to support independent science.

Finally, I ask the Senate to hold accountable the Government Attorneys and Judges that were the source of this injustice and who are still employed by the federal government. These individuals cannot be allowed to be 'reshuffled into the deck' ,and be protected within the federal system. They must be separated and terminated in order for justice and integrity to be restored into this Agency of the United States Government.

Thank you for listening.