

Congressman John Tierney
U.S. Homeland Security and Government Affairs Subcommittee on Federal Financial Management, Government Information, Federal Services, and International Security

Remarks as Prepared for Delivery
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Thank you Chairman Carper and Ranking Member Brown for the opportunity to testify at today's hearing.

I see some familiar faces from the Congressional hearing we held in Gloucester a little more than one year ago.

Notably absent, however, is Dr. Jane Lubchenco, the head of the National Oceanic and Atmospheric Administration (NOAA). It is telling that, given the topic of this hearing and the request for her to testify, she is not here. It shows a lack of interest and investment in the issue at hand and leads me to continue to question if she is right person to lead NOAA in a new direction and find solutions to the outstanding issues at the agency.

Nevertheless, I appreciate everyone who is here taking the time to testify today in an effort to continue oversight over – and ensure accountability of – those responsible for protecting and supporting our fishing community.

I would particularly like to thank Mr. Zinser, the Commerce Department's Inspector General, who is testifying directly following this panel. He and his team have shown dedication to complete thorough investigations in order to ensure our fishing communities are treated fairly.

To that end, here we are, several months into a new fishing year – the second year that the majority of our community's fishermen are operating under the catch-share program – and the fishing industry continues to endure numerous challenges and economic hardships.

While individual fishermen are feeling a large brunt of these challenges times, the fishing industry includes many other related businesses – repair and maintenance, fuel for boats, ice to preserve the catch – just to name a few.

Three businesses located in my district come to mind.

First, the Gloucester Marine Railways - a Massachusetts shipyard that has served the fishing fleet of New England since before the Civil War.

The second, Cape Pond Ice Company - started as Gloucester Co. in 1848 supplying the fresh fish industry with a reliable, volume source of ice, among other services.

These two businesses have described the primary reasons for their economic struggles as being extreme underfishing as a result of the overly prohibitive catch share limits and the consolidation of the fleet.

The railway, which once had 40 boats in the yard, has six today.

The ice plant in The Fort, which was once making 350 tons a day, cut capacity to 200 tons while selling an average of five tons a day to the boats.

The third is another business which has gone through economic hardship not only as a result of the over-regulation of the fish stocks, but also the overzealous action of the Office of Law Enforcement (OLE).

The Gloucester Seafood Display Auction, which provides buyers and sellers a fair venue to market, sell and buy product, has been forced to endure one of the worst overreaches of authority – as was recently confirmed by the Special Master appointed to review enforcement cases.

While I will leave it to the owner of the Display Auction, Mr. Ciulla, to expand on this during the third panel, the on-going challenge he has faced is just one example of how the fishing industry is effected by burdensome and confusing regulations, overzealous catch share limits, unfinished economic development assessments and on-going reparations for wrongdoings in enforcement cases.

The focus of this hearing is on how NOAA is managing funds to protect the domestic fishing industry. Specifically, the Asset Forfeiture Fund.

As most people in this room are well aware, the Department of Commerce Inspector General has issued several reports in the past 18 months that have highlighted common abuses and misuses of power, as well as rampant mismanagement throughout the agency, especially in the Office of Law Enforcement (OLE) in the Northeast region.

Specifically, the IG found “weak internal controls” over the Asset Forfeiture Fund – and Mr. Zinser thoroughly discussed this when he testified in Gloucester one year ago.

However, due to the lack of information available to the IG during the initial investigation, the agency issued a follow-up report last July specifically on the Asset Forfeiture Fund.

The findings showed that “NOAA has administered the Asset Forfeiture Fund in a manner that is neither transparent nor conducive to accountability, thus rendering it susceptible to both error and abuse.”

While NOAA has taken some corrective action to address the findings of the report as it relates to the Asset Forfeiture Fund, I believe that lapses and potential conflicts of interest remain.

For example, under current NOAA policy, there is authority to use monies from the Asset Forfeiture Fund for the following purposes, among others: rewards of not less than 20% of the penalty collected or \$20,000, whichever is the lesser amount, for information related to enforcement actions; expenditures directly related to specific investigations and enforcement

proceedings; and reimbursement to other Federal or State agencies for enforcement related services provided pursuant to an agreement entered into with NOAA.

In essence, the OLE can increase its own resources by affecting forfeitures and collecting assets and cash, depending on the aggressiveness of its enforcement.

At worst, this is an invitation for abuse. At best, it raises the issue of perception of conflict and a perverse incentive driving enforcement.

Given the history of abuses in this area, I question the advisability of allowing the Fund to be used for these purposes.

I introduced legislation last year, which would have prohibited the uses of Asset Forfeiture Fund monies for these purposes among others. However, NOAA continues to recognize the aforementioned uses as allowable.

I trust Mr. Schwaab, who is also testifying on the next panel, would be able to speak about how the agency's policy will appropriately address the errors and abuses cited in the July 2010 IG report and indicate whether he believes that codifying a policy on the allowable uses of the Asset Forfeiture Fund is a necessary step to ensuring no conflict of interest remains.

That is a step I am not afraid to take if it will ensure the end to misuse and abuse of the Asset Forfeiture Fund and lead to a better environment for our fishermen. We continue to review the Fund administration, rules and OLE practices and will act to eliminate problems.

Finally, one essential question that is left unanswered is how NOAA has used the funds since the report was released.

In August of 2010, NOAA confirmed a balance of \$7.5 million in the Asset Forfeiture Fund. In March of 2011, NOAA initiated an independent audit which was just completed this past Thursday, June 16, 2011 by the accounting firm Clifton Gunderson, LLP.

NOAA has stated that "ensuring that the monies in the Asset Forfeiture Fund are properly accounted and used is essential to carrying out our duties as responsible managers of federal dollars."

It is imperative that we hold NOAA accountable for addressing the significant deficiency in internal control over financial reporting and the instance of reportable noncompliance with the selected provisions of laws and regulations cited in the audit.

As I indicated previously, the Asset Forfeiture Fund is just one of many issues on which we need action.

We need a renewed commitment from the Department of Commerce to improve economic conditions for our fishermen and treat them with the fairness they deserve.

I will keep fighting to ensure that this happens, and I appreciate this Subcommittee's commitment to the same.

Thank you Chairman Carper and Ranking Member Brown.