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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-3303**

December 2, 2010

The Honorable Jane Lubchenco  
Administrator  
National Oceanic and Atmospheric Administration  
Herbert Clark Hoover Building, Room 5128  
14th Street and Constitution Avenue, NW  
Washington, DC 20230

Dear Administrator Lubchenco:

I am writing to you today regarding the National Oceanic and Atmospheric Administration's (NOAA) Proposed Policy on Prohibited and Authorized Uses of the Asset Seizure and Forfeiture Fund (RIN 0648-XZ29). As you know, a recent Inspector General-commissioned audit of the NOAA Fisheries Asset Forfeiture Fund (AFF) found extensive waste, fraud and abuse by the agency. It also proved what fishermen have long suspected: allowing NOAA Fisheries to retain the proceeds from forfeitures, seizures, fines and penalties against fishermen gives the agency a perverse incentive to continue its abusive enforcement practices against fishermen. This conflict of interest must be eliminated. While the draft policy includes encouraging elements, it unfortunately falls short of that goal.

It is important to reiterate just how badly NOAA Fisheries mismanaged the Asset Forfeiture Fund. The audit found that NOAA Fisheries "administered the AFF in a manner that is neither transparent nor conducive to accountability, thus rendering it susceptible to both error and abuse." It also found that NOAA Fisheries used the AFF extensively "to cover a variety of expenses which do not appear to be '...directly related to investigations and civil or criminal enforcement proceedings,'" which they are required to be by law. Such expenditures include over \$500,000 spent on international travel in the past four and a half years. Other expenditures include \$4.6 million for the purchase of 200 vehicles for only 172 enforcement personnel, including a vehicle for former OLE Director, Dale Jones, who would "ride the train to his office free of charge, by virtue of his status as an armed law enforcement officer;"; \$2.7 million for the purchase of vessels, including \$300,000 for an undercover vessel that the manufacturer's website described as "luxurious" with a "beautifully appointed cabin"; and dozens of purchase card transactions that were either improper, fraudulent or duplicative.

The agency's draft policy wisely includes proposals to curb some of these abuses, including prohibitions on the use of AFF funds for:

- funding for NOAA employee labor, benefits, or awards;
- funding for vehicle or vessel purchases or leases;
- funding for travel not related to specific investigations or enforcement proceedings; and,
- funding for equipment such as computers, blackberries, cell phones and furniture.

These prohibitions are necessary to help realign NOAA policy with the statutory language in the Magnuson-Stevens Fisheries Management Act that authorizes the AFF. However, they are not sufficient in that regard.

On that note, it is extremely troubling that the agency's draft policy would allow proceeds from fines, penalties and forfeitures from fishermen to be used to pay the salaries of the Administrative Law Judges (ALJ) deciding cases brought against fishermen. Not only is this use of funds not authorized by the Magnuson-Stevens Act, it is terrible policy. The right to a trial before an unbiased, impartial judge is a bedrock principle of our democracy. If fisheries law judges are compensated with money from judgments against fishermen, the appearance, if not the practice, of impartiality is fundamentally compromised. I strongly urge you to eliminate this conflict of interest by prohibiting use of AFF funds to pay ALJs, and to instead use dollars appropriated from Congress for that purpose.

Thank you for your consideration. I look forward to your response.

Sincerely,

A handwritten signature in cursive script that reads "Walter B. Jones".

Walter B. Jones  
Member of Congress

Thank you!