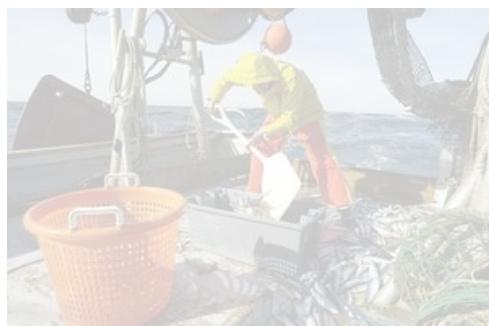


# Report validates fishermen's concerns

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The U.S. Inspector General was critical of NOAA's regulation of the fishing industry, particularly in the Northeast.

**By Rich Eldred  
The Cape Coder**  
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CAPE COD — Fair is fair, but the National Oceanic and Atmospheric Administration has been less than fair when enforcing fishing rules in New England, according to the U.S. Inspector General.

"The report came back validating the opinions and personal experience of a lot of our fishermen," said Tom Dempsey, a policy analyst at Cape Cod Commercial Hook Fisherman's Association. "For years the guys have been saying it's an unfair system plagued by heavy-handed enforcement."

In the report, released Jan. 21, the inspector general didn't investigate individual cases (they lacked the time) but examined the general flow of regulation.

"I take this report very seriously," NOAA administrator Jane Lubchenco said Feb. 3, in a statement. "I want a comprehensive approach to addressing both the IG's observations and the perceptions of fishermen. Fish are a public resource that should be protected through proper regulation and enforcement."

"We can't manage without trust," she added.

The inspector general felt NOAA failed to adequately manage an enforcement program that dished out seemingly arbitrary penalties and fines. Complaints from fishermen included abuses of authority, disparate treatment and excessive fines.

Fines in the Northeast from 2004-09 were \$5.5 million, more than 2 1/2 times higher than the next greatest region. Many fines were slashed on appeal: from \$35,000 to \$14,000, from \$60,000 to a six-month permit sanction, from \$75,000 to \$25,000 and from \$270,000 to \$54,000, to cite just some examples. All told, in the Northeast from 2004-09, initial fines were reduced by 70 percent. That underlines the questionable nature of the original penalty.

"And the appeals process ends up costing so much in legal fees," Dempsey noted, it's worth bargaining down to save money. "I was baffled how little guidance is actually provided to enforcement officials. Too much is left to the discretion of individuals. I also think there needs to be some sort of independent appeals process – that doesn't cost them thousands in legal fees."

Fishermen are not opposed to rules.

"Everyone agrees we need to ensure compliance with fishing regulations. We're not advocating lax enforcement," Dempsey said.

Small-boat owners felt put upon.

"The perception exists that NOAA is intentionally putting small fishermen out of business in favor of corporate fishing entities," the report conceded. "Sector management – which is scheduled to begin this year – has caused substantial concern within the Northeast commercial fishing community; fishermen fear that it will drive small-boat owners out of the industry."

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Cited in the report were cases where fishermen were told it was all right to fish by regulators, then fined tens of thousands of dollars for doing so.

"It is unclear how (the General Counsel for Enforcement and Litigation) attorneys determine the assessments for fines and penalties," the report said. "GCEL attorneys possess and exercise too much authority and discretion in assessing penalties, prosecuting cases and negotiating settlements."

In one case a penalty for overfishing cod was assessed three years after the incident, long after the fisherman forgot the details and he was unable to defend himself. Fishermen in Gloucester were cited for noncompliance with paperwork while similar violations in New Bedford were ignored.

The GCEL attorneys countered that while regulations are complex that was due to exemptions and exception incorporated by the fisheries management council and they would like to see them simplified for easier enforcement. They also argued that, "penalties must serve as a deterrent to future violations."

"According to one GCEL attorney, each case is like a snowflake – they are all different," the report said.

The report found particular problems in the Northeast.

"If not addressed by NOAA's senior management, these issues have the potential to further strain the tenuous relationship that exists in the Northeast region," the report said. "We find it hard to argue with those who view the process as arbitrary and in need of reform."

Lubchenco promised to address those concerns as well as increasing transparency and hiring fewer criminal investigators (who make up 90 percent of the enforcement staff) and more regulatory inspectors. She will develop specific objectives and detailed plans for a law enforcement summit by June 30 to "develop forward thinking approaches and long-range policies for properly executing enforcement actions."

Criminal procedures will no longer be applied to civil offenses.

"The fishing laws and regulations are highly complex, making compliance by those in the industry difficult even with the best of intentions," the report admitted, noting fishermen's concerns that "fines are excessive, constituting a form of bounty, because NOAA is able to retain the proceeds."

NOAA has seized \$8.4 million in assets. Lubchenco pledged to place the assets under NOAA's comptroller.

The inspector general recommended NOAA reconsider if they need to approach fisheries regulation from a criminal-investigative perspective and promote more transparency. They also urged NOAA to coordinate science and enforcement needs to better establish priorities.



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