

Opening Statement by Senator Scott P. Brown

June 20th, 2011

Subcommittee on Federal Financial Management, Government
Information, Federal Services, and International Security

U.S. Senate Homeland Security & Governmental Affairs Committee

**“How is NOAA Managing Funds to Protect the Domestic Fishing
Industry?”
Field Hearing In Boston Massachusetts**

Welcome everyone to Boston and thank you to my friend Mayor Menino for hosting us in such an historic venue. Also, I'd especially like to thank Chairman Carper, for graciously allowing me to hold this hearing in Boston this morning. I commend your true bipartisanship in Chairing this Subcommittee and commend its goals of attacking waste, fraud and abuse throughout the government. Protecting our national fish stocks from overfishing is a national imperative that requires good management backed by consensus science. Today, I will try to provide a voice to the many fishermen throughout New England and echo the voices of many other elected officials in this State, including Congressmen Barney Frank and John Tierney, Mayors Lang and Kirk, Senator Tarr, Representative Ferrante and the many others who have worked tirelessly in bringing attention to the plight of the New England fishermen and abuses at NOAA. Fishing is a centuries old Massachusetts tradition but more importantly it is

a homegrown, modern industry that employs thousands of hard working people who put food on America's tables. NOAA's history of overzealous enforcement in the New England fishery has come at the cost of fishermen's trust and their livelihood. Many tell me that NOAA regards them as criminals instead of a legitimate and valued regulated industry. While I again want to emphasize that our fishing regulations must be enforced, we must not forget that fishing is about catching fish, where 96% of violations are civil matters. The tone and tenor of enforcement must reflect this. Yet NOAA agents carry guns and 90% are criminal investigators. So we have a situation where armed criminal investigators are primarily enforcing non-criminal regulations – essentially issuing tickets. The Federal Aviation Administration (FAA), which regulates an industry where an error can lead to large-scale disaster, has zero criminal investigators. None. If they don't need them, I have to wonder why they are being used so prominently in the fishing industry.

It is clear to me that that some of the abuses we will hear about today were motivated by the perverse incentive to fill the coffers of the Asset Forfeiture Fund (AFF), which uses the proceeds from enforcement activities to fund further enforcement action. The AFF was treated like a "piggy bank" by NOAA's Office of Law Enforcement (OLE) and Office of

General Counsel for Enforcement and Litigation (GCEL), which had accounting practices that would have made Enron execs blush. In fact, a damning KPMG review found the fund to be in disarray, with no one at NOAA able to explain how it worked. Predictably, NOAA's law enforcement officers and attorneys went on a spending spree funded like a bounty on hard-working fishermen. For example, OLE purchased more vehicles (202) than it had enforcement staff (172) and a luxurious boat at a cost of \$300,000, which CBS News says was used for fishing. There's some irony.

You would think that a fund like this would have tight supervision, but it was only about 16 months ago that the NOAA Comptroller was given control of this fund, which draws fines from many statutory sources established decades ago. Despite the unyielding exactness NOAA used in collecting these fines, they couldn't tell the Inspector General the balance of the AFF or even give a definition of the fund until last Thursday. So finally, after ignoring the problem for decades and only when facing intense Congressional scrutiny, was NOAA able to subject its AFF financial statements to an audit. Although this is progress, being able to produce a year's worth of accurate financial statements is an embarrassingly low threshold for the management of millions of dollars in fines paid by

fishermen over the years. The fact that NOAA's Washington leadership is celebrating the absolute bare minimum of financial transparency tells me just how out of touch they have become. It is incumbent upon NOAA to rebuild the trust of fishermen, to do that NOAA must account for the money paid by fishermen as fines and examine whether it was used properly.

But we must do more. I will follow up until we know who let the AFF slide into chaos. I will add for the record that I requested and gave NOAA ample time (3 weeks) to produce documents related to the AFF. Not a single page was produced until last Friday afternoon. I can't help but wonder whether NOAA would tolerate the same kind of behavior out of a Massachusetts fisherman.

NOAA's stonewalling of Congress is even more concerning given their history of making documents disappear. In November 2009, while facing litigation and an Inspector General review, NOAA's chief law enforcement official directed the shredding of 75-80% of files in his office, in violation of several rules and all common sense.

The Inspector General in a September 2010 report also confirmed nine complaints against NOAA involving "false information in an affidavit; entry into a facility for other than authorized purposes; excessive fines; and comparatively steep assessed penalties in the Northeast Region which

leverage settlement while deterring respondents from taking their cases to hearing.”

This led Secretary Locke to appoint a distinguished retired federal judge as a Special Master to review select NOAA enforcement cases and make recommendations about the propriety of past penalties assessed against fishermen. In two cases, the Special Master found that NOAA had abused its power. In the case of Captain Yacubian, the Special Master found that NOAA lawyers had unduly pressured him by unfairly delaying the sale of his vessel and extracting an oppressive penalty. The Special Master inferred that this led to the sale of a family farm that had been in the family since the 1640s. The Special Master found in another case that NOAA imposed excessive fines and conducted selective enforcement on a family-owned fishing auction. The Administrative Law Judge (ALJ) in that case found that the NOAA lawyer’s penalty was contrary to the interest of justice and would have essentially put the fishing auction out of business, depriving fishermen of a major market.

I am happy that Mr. Yacubian and Mr. Ciulla are here with us this morning to tell their stories.

The mismanagement of the AFF and the enforcement issues surrounding it are, I believe, symptomatic of a larger problem at NOAA.

This culture of criminalizing our New England fishermen and this adversarial relationship has gone on too long, and it must change. While I do want to acknowledge the Administrator for some of the actions she has taken, especially the long overdue revision to the penalty schedule, there is a lot of work left to be done. We can do better. We need to find a way to restore trust between our fishermen and NOAA.

That trust will be hard to rebuild until those federal employees at NOAA who intentionally and routinely breached the public trust are held accountable. I wish I could refer to them as former federal employees, but they remain employed -- collecting six-figure salaries. And there is the perception that the leadership at NOAA has protected them. We have a high-ranking NOAA official here today, Assistant Administrator Eric Schwaab. If you take nothing else back to your Washington headquarters, let it be this: members of the NOAA enforcement community who abused their prosecutorial authority or who violated the public's trust should not just be sanctioned, but should be removed. Just as those who violate our environmental laws should face consequences, those who break the public trust should pay a hefty price. No one is above the law.

The AFF may have been a good concept, but in practice it has been a disaster. It has been an incentive for abuse and the Inspector General has documented too many abuses for us to cover here today.

That is why I plan to introduce legislation to reform the AFF in order to ensure that it is used for legitimate enforcement and to alleviate some of the costly burden of fishery regulations and compliance. Finally, NOAA should immediately follow the recommendation of outside investigators and appoint an ombudsman who reports directly to the Under Secretary.

It is important to keep in mind that these regulations and enforcement actions have real effects on an industry that is feeling the bite of smaller catches and a miserable national economy. Today, these forces are squeezing out more fishermen and forcing a consolidation that threatens the economies of Gloucester and New Bedford and other ports throughout Massachusetts and New England. We must decide whether the economic life of the New England fisherman is worth saving. I think it is. I am happy to work in a bipartisan manner with those who want to examine ways to help our New England fishermen..

I want to again thank the distinguished chairman for holding this hearing. You are right on the money about “changing the culture in Washington”. Let me also thank the witnesses for taking time to appear

here today. With both NOAA's DC leadership and the New England fishing community here today, I think this is an excellent opportunity -to begin to address the long-standing distrust between the parties. Hopefully, this hearing will mark the beginning of a -cooperative relationship that can both protect this important natural resource while promoting a vital Massachusetts industry.