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United States House of Representatives
Committee on Natural Resources
Subcommittee on Insular Affairs, Oceans and Wildlife
1324 Longworth House Office Building
Washington, D.C. 20515

RE: Oversight hearing on "Setting the Bar for Accountability: Improving NOAA Fisheries Law Enforcement Programs and Operations."

Chairwoman Madeline Z. Bordallo,

Thank you for the invitation to provide comments to the Subcommittee regarding the recommendations in the recent report from the Office of Inspector General (OIG) of the U.S. Department of Commerce regarding NOAA Fisheries Enforcement Programs and Operations (Final Report No. OIG-19887). I have provided a summary of my related personal experience in fish and wildlife law enforcement at the state level, specifically Florida, in a separate document.

It is most appropriate to set the foundation of the testimony I am able to provide the Subcommittee through a brief introduction and historical background of Florida's relationship with NOAA Office for Law Enforcement (OLE). I will address the OIG's three primary concerns in reverse order.

I am Lieutenant Colonel Bruce Buckson, Deputy Director of the Division of Law Enforcement (DLE), for the Florida Fish & Wildlife Conservation Commission (FWC). I am in my 28th year of my career with FWC DLE. I served as Florida's law enforcement representative on Marine Fisheries Commissions and Fishery Management Councils for approximately 12 years. Though I still interact with the law enforcement committees and advisory panels, the Florida seat on these boards is officially held by one of my Section Leaders. I have also served as the FWC law enforcement liaison to our federal partners in the NOAA OLE Southeast Region. In addition, I currently sit on the NOAA OLE Joint Enforcement Agreement (JEA) Advisory Committee.

NOAA needs to reassess its OLE workforce composition to determine if this criminal-enforcement-oriented structure is the most effective for accomplishing its primary regulatory mission -

The State of Florida has partnered with NOAA OLE through a Cooperative Enforcement Agreement (CEA) since May of 1984, nearly 26 years. (Though it is believed there were agreements before this date, this is the oldest document available.) This agreement, as well as those that followed, are based on the premise that enforcement of fishery laws is in the best interest of the state and nation. Further, there are state enforcement personnel and equipment currently being used to enforce state fisheries regulations and these assets could be used to assist with ensuring compliance with federal fishery regulations as well.

This overview serves well as a launching point to provide some views on the NOAA OLE workforce composition as it relates to criminal investigators and uniformed officers. The FWC DLE mission is to protect Florida's natural resources and people through proactive and responsive law enforcement services. The FWC DLE mission is supportive of the Agency overall mission of "Managing fish and wildlife resources for their long-term wellbeing and the benefit of the people". Our law enforcement motto is "Patrol, Protect, Preserve".

The FWC DLE currently has 721 sworn law enforcement positions. These are all fully trained and equipped law enforcement professionals who patrol the woods and waters of the State of Florida and adjacent federal waters. Over 500 of these law enforcement positions are frontline enforcement officers or investigators. This number does not include supervisors, pilots and specialty investigators. Through our CEA with NOAA OLE each of these officers are provided training and authority to enforce select federal conservation regulations identified in the CEA.

Since 2001 FWC has also had a Joint Enforcement Agreement (JEA) with NOAA OLE. The JEA builds on the foundation of the CEA's authorization and serves as a mechanism to provide NOAA OLE state partners with some funding for federal fishery enforcement efforts. There are approximately 26 states and territories participating in the JEA program. The JEA also provides an operations plan that is cooperatively created with each state's conservation enforcement agency and NOAA OLE.

Through the JEA, the FWC provides over 500 patrol personnel for federal fishery regulations that may otherwise be outside of current fiscal constraints of NOAA OLE. The majority of these personnel are uniformed patrol officers. Though these officers are not solely dedicated to enforcing federal fishery regulations, they have the ability and authority to address federal violations when observed and during targeted federal fishery patrol hours. This is clearly in the best interest of conservation at the state and federal levels.

The state relationship with NOAA OLE is analogous to a local Police Department's uniformed Patrol Officers and Detective squad. The Patrol Officers are the visible first responders to accidents, crimes and calls for service. The Detective Squad handles in depth investigations, covert operations and are normally less visible to the public. Conceptually in a CEA / JEA with NOAA OLE, the state officers provide the Patrol function and NOAA OLE provides the Detective function. Obviously there are necessary deviations from this concept with regard to specific cases. Quite often egregious violations impacting state resources become joint investigations. However, the JEA concept strongly encourages the less egregious fishery violations be handled as a state violation when possible.

This Patrol (State LE) and Investigation (NOAA OLE) concept is extremely effective and efficient. The downside may be that NOAA OLE agents are somewhat less visible, even though the enforcement objective is being met.

The NOAA OLE agents have a skill set and expertise to go beyond the state jurisdictional boundaries and sometimes beyond the training and experience of the state officers. This has proven critical in addressing violations that have significantly impacted Florida's fishing industry and resources. This is exemplified by

a NOAA OLE case involving a seafood dealer in the Florida Panhandle who mislabeled hundreds of thousands of pounds of Vietnamese catfish as grouper. Grouper is locally caught and a popular Florida fish for markets and restaurants. The mislabeling was done to avoid paying tariffs on the imported fish, but also significantly impacted Florida fishers by undercutting the price of locally caught grouper. The mislabeling issue gained widespread media attention and prompted investigative reporting. Reporters obtained samples of grouper from many restaurants and had the samples analyzed, only to find many of them were in fact not grouper. This impacted the Florida fishers, wholesale fish dealers, retail fish dealers, restaurants and consumers. Though this dealer was not the only participant in mislabeling fish, the case helped turn the tide for local fishers and restaurants. I believe this case helped restore consumer confidence with regard to grouper, as well as other species.

Taking a criminal investigative approach to potential violations carries a higher standard of proof than civil violations. This serves primarily to protect the rights of those being investigated and ensure a quality investigation. As well, there is often a potential that an investigation of what begins as civil could lead to a criminal violation, in which case criminal investigative standards would need to be applied.

To summarize these comments in the context of the recommendation to reassess the OLE workforce there are three points.

1. There has been a clear value in having NOAA OLE investigators pursue some high profile and complex Florida cases.
2. The state conservation law enforcement contingencies are well complimented by the investigators of NOAA OLE. The value of this increased visibility for federal fisheries enforcement may not have been fully considered.
3. Possibly most important is the fact that there is a significant patrol function being accomplished by JEA partners.

Though some of these issues are acknowledged in the OIG report, it is critical to consider all potential impacts of a drastic change in NOAA OLE workforce composition and must be based on current circumstances.

My comments to this point have been directed toward the third recommendation, the reassessment of NOAA OLE workforce and specifically from a state law enforcement partner perspective with the benefit of two and half decades of experience.

NOAA needs to strengthen policy guidance, procedures, and internal controls in its enforcement operations to address a common industry perception that its civil penalty assessment process is arbitrary and unfair

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The second OIG recommendation is apparently being addressed through GCEL initiatives to promote transparency, help ensure fairness and open lines of communication with the regulated community. Relative to this recommendation, FWC has recently had discussions with GCEL regarding a more broad use of the summary settlement process for less significant federal cases made by state officers.

NOAA senior leadership and headquarters elements need to establish substantially greater management and oversight of the agency's regional enforcement operations -

The final portion of my comments will be less specific and an attempt to provide useful input on what I am viewing as a "quest for excellence". My role as a state agency partner and not a specific subject of the OIG report makes taking this view easier than it might be for my federal partners. The comments are simply observations of challenges facing conservation agencies. As well, I don't have the information to contest the accuracy of the OIG report, nor do I believe that is why I was invited to attend this hearing. The most important objective is to rebuild the public's trust with regard to the mission of protecting the living marine resources and their habitats.

From my observations there often seems to be a separation between law enforcement and the conservation managers and scientists within a conservation agency. This may be due to perceived differences in the mission of each group. Because of this it seems that law enforcement personnel in these agencies have often been viewed as "unique" or "outsiders" and sometimes simply a necessary evil within the agencies and by the public. Conservation managers and scientists are most interested in protecting the resources and less interested in how those protections are implemented. The implementation of regulations is precisely what law enforcement divisions are responsible to accomplish.

Quite often the law enforcement personnel themselves have unintentionally helped create and often perpetuated the assumption that they are different by inhibiting cross divisional interaction. As an example, I remember a time many years ago when the law enforcement offices of a conservation agency at the headquarters building were only accessible to law enforcement personnel. This restriction was implemented by only allowing the elevators to stop on the law enforcement floor with the use of a special key.

Most interesting is that both law enforcement personnel and managers/scientists are headed toward the same goal post, conservation. Add to these somewhat differing viewpoints the impact both have on the stakeholders and there is potential for disharmony. We must also remember that most of the stakeholders are headed toward the same goal post as well.

As a member of the Law Enforcement Committee (LEC) for the Atlantic States Marine Fisheries Commission (ASMFC) in the mid 1990's, there was a continuing struggle for the LEC to become an integral part of the management process. It was clear that law enforcement was critical to the success of each fishery management plan, but input from the LEC in the planning process was not often requested. With the support of the Commission leadership, law enforcement personnel committed to participating in the fishery management boards, reporting the status of the fishery management plans and any enforcement concerns to the full LEC. Ultimately this information was provided to the full Commission. The ASMFC Strategic Plan was revised to include a specific goal to enhance law enforcement participation in the process. Today the law enforcement committee members are clearly a part of these management teams and the process.

I expect there are many other examples of failures and successes in overcoming these pitfalls for multiple jurisdictions. As well, there are programs and specific action items that can assist in resolving the issues, but any successful program begins with understanding it is a 'people' issue and may require some movement from comfort zones.

I believe the Florida Fish & Wildlife Conservation Commission is doing a good job at working across Divisional and Sectional lines to further the agency mission. This requires a diligent effort. Recently, Colonel Jim Brown, the Director of the FWC Division of Law Enforcement, began meetings with other Division Directors to calibrate our enforcement priorities with their conservation priorities. I hope we find we are on track, but I expect we will find it necessary to tweak our operational plans. We have also planned to have similar meetings with our stakeholders around the state. This is designed to explain our mission, strategies and authorities while learning the needs and expectations of the stakeholders, ultimately building confidence through a transparent process.

I hope these comments prove helpful in rebuilding the public trust in NOAA's efforts to protect the nations living marine resources.

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