



Hon. Charles B. Swartwood, III (ret.)  
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December 6, 2011

Honorable John Bryson  
Secretary of Commerce  
[thesec@doc.gov](mailto:thesec@doc.gov)

Re: Special Master Investigation of NOAA Enforcement Action

Dear Secretary Bryson:

On September 23, 2010, I was appointed Special Master by former Secretary Locke to review cases previously identified by the Commerce Department Office of Inspector General (OIG) to determine whether any of them involved conduct by NOAA personnel that had unfairly affected the outcome of a particular case. In April 2011, I delivered my Report and Recommendation to Secretary Locke concerning thirty (30) OIG designated cases. Secretary Locke accepted practically all of my recommendations.

By Memorandum Decision dated March 16, 2011, Secretary Locke determined that review of a wider pool of cases was merited and established an application process for review of cases that met certain criteria as set forth in the Memorandum. I continued as Special Master to review applications for relief filed by those alleging unfair enforcement action by NOAA, to investigate those complaints and to make recommendations to the Secretary for resolving those complaints.

The following is an interim report of my progress to date in connection with this investigation.

I am currently investigating sixty-five (65) complainant applications. In the time from my interim report of October 14, 2011, I have discovered, after further investigation, that one (1) case previously accepted for review was ineligible and have so notified the applicant.

The first task in this investigation was to review the complainant applications for eligibility. That task is on-going. Second, my assistants and I have reviewed NOAA's files for relevant documents concerning each complainant. That task has been completed.

Third, I have divided the remaining investigation into three (3) separate phases where my assistants and I review a third of the case files, interview the complainants/witnesses in connection with those case files and then prepare a written summary of provisional facts obtained from NOAA's case files, the complainant documents and complainant interviews. I have then submitted those summaries to NOAA Special Agents and/or Enforcement Attorneys involved in each case for their written response. In this process, I have reserved the right to personally interview NOAA personnel to resolve questions of fact.

To date, we have prepared and sent to NOAA personnel Provisional Findings of Fact in forty-five (45) cases, have received responses from NOAA personnel in twenty-one (21) of those cases and expect the remaining responses to be filed sometime this month.

Of the remaining twenty (20) cases, we have interviewed two (2) complainants, have scheduled interviews for thirteen (13) other complainants before Christmas and expect to interview the remaining complainants by the end of December or at the latest, the first week of January 2012. Once these interviews have been completed, we will prepare Provisional Findings of Fact for these remaining cases and send those to NOAA personnel for their response.

The fourth stage of this investigation is to finalize the Findings, Conclusions and Recommendations for each case and assemble them into a final Report and Recommendation with appropriate volumes of exhibits.

My goal is to complete this assignment as soon as practicable and my rough estimate of a completion date is March 15, 2012, providing there are no unforeseen delays.

Very truly yours,

Charles B. Swartwood, III

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