



NEWS RELEASE

From New York State Inspector General
Catherine Leahy Scott

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INVESTIGATION INTO SEARCH AND SEIZURES OF COMMERCIAL FISHING CATCHES LEADS TO SUBSTANTIAL CHANGES TO POLICIES AND OPERATIONS AT STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

*Seized Catches Or Their Value To Be Returned Upon Acquittal Or Dismissal Of
Fishing Related Charges And Environmental Law Enforcement Officers End
Practice Of Negotiating Disposition Of Charges Directly With Defendants*

State's Mandated Efforts To Track Fish Harvesting Also Found Lacking

ALBANY – New York State Inspector General Catherine Leahy Scott today released her investigative report into the enforcement and monitoring activities of the New York State Department of Environmental Conservation (“DEC”) regarding commercial fishermen on Long Island.

Inspector General Leahy Scott’s investigation found that DEC failed to implement policies that ensured proper seizures of fish and lacked any procedure regarding the return of seized fish or their proceeds upon acquittal or dismissal of fishing-related charges, resulting in unfair practices. The investigation also determined that DEC’s mandated efforts to track fish harvesting were woefully inadequate. The investigation further found that DEC’s conversation officers often negotiated plea agreements directly with the fisherman they charged with violations, creating at least an appearance of impropriety and coercion.

As a direct result of this investigation, DEC made restitution for catches that were seized but no wrongdoing was found; issued new evidence control policies; and ended the long-standing practice of their environmental law enforcement officers negotiating potential dispositions with the very defendants they accused of violating the law.

“While state law permits environmental conservation officers to make seizures in specific circumstances, DEC’s policies and practices relating to those law enforcement activities failed to ensure the integrity of this process,” said Inspector General Leahy Scott. “As a result of my investigation, the DEC made significant reforms to its policies and procedures, including those governing the seizures of potentially illegal catches and the monitoring of marine resources.”

DEC seizes catches if fishermen do not possess required licenses or permits to fish for a particular species. DEC then can sell or donate fresh catches if they are not contaminated. Proceeds from sales are deposited in DEC's Marine Resources Account, which, under State Finance Law, is used for "the care, management, protection and enlargement of marine fish and shellfish resources."

The Inspector General's investigation revealed relatively few sales of seized perishable evidence between 2010 and 2014, with the total dollar amount of the 2010-2011 sales in DEC's main fishing region of under \$13,000, the bulk of which involved one large seizure and sale of over \$8,300. This amount was properly placed into the Marine Resources Account, which, over a five-year period, has held between \$1.5 million and just over \$4 million in revenue from other budgetary sources.

The Inspector General found just two instances since 2010 where a sale of seized evidence occurred and the case was either dismissed or the defendant prevailed at trial. If a fisherman is acquitted or the case is dismissed, he or she is entitled to compensation equal to the value of the catch. Nevertheless, DEC returned the proceeds only after this investigation had commenced. This investigation found that DEC lacked consistent policies and procedures regarding the disposition of seized fish, and lacked any procedure regarding the return of seized fish or its proceeds upon acquittal or dismissal of the charges. As a direct result of this investigation, DEC issued new evidence control policies in April 2014, which, significantly, place the burden on DEC to return the proceeds upon acquittal or dismissal of the charges.

Among other findings, Inspector General Leahy Scott's investigation determined that mandatory reports by fishermen detailing their catches were not processed by DEC from 2008 through 2011. As a result, an Atlantic Coast organization that aggregates states' fishing data was not provided New York State's catch data for those years. Notably, DEC was awarded \$174,814 and \$104,500 respectively in federal grants for 2010 and 2011 to hire an outside contractor to input the data, but due to DEC's mismanagement of the spending and contract processes associated with these grants, DEC was not able to utilize the funds. Due to this failure, some fishermen had been reissued permits absent basic compliance with DEC regulation.

Additionally, the Inspector General found that DEC's law enforcement officers often negotiated plea agreements and fines with defendants directly prior to a judicial hearing on charges the officer initially lodged. The Inspector General found such negotiations between the direct accuser and the accused may create an appearance of impropriety and coercion.

Upon the Inspector General's recommendation, DEC has taken corrective action, including the following:

- DEC substantially revised seizure policies in 2014 to provide staff members clear guidance on the conditions and circumstances for returning seized evidence, to ensure the integrity and transparency of that process;
- DEC successfully secured federal grants enabling the agency to hire the personnel necessary to appropriately file necessary vessel trip reports to ensure commercial fishermen are not over harvesting and are in compliance with their issued licenses to fish;

- DEC streamlined its permitting system to help ensure more timely compliance reviews for renewal, denial or revocation of licenses;
- DEC has coordinated a system with state and federal budgetary approval agencies to ensure timely approval of grant applications;
- The DEC's Bureau of Marine Resources will maintain a comprehensive record of licensees and vessel trip report submissions by the fishermen. New policies also require BMR will take initial steps to notify fishermen of any delinquent reports and allow them an opportunity to submit the delinquent report before being subjected to a potential fine or permit revocation.

A copy of the Inspector General's report can be found [here](#).

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